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ABSTRACT

This is a report on Alaska's "local option law" which allows villages to choose one of the following four options on alcohol availability in their communities: (1) the sale of alcoholic beverages is prohibited unless sold under a community liquor license; (2) the sale of alcoholic beverages is limited to one of several types of retail licenses such as a restaurant wine license; (3) the sale of alcoholic beverages is prohibited; and (4) the sale and importation of alcoholic beverages is prohibited. Since effects of the law are not yet known, the purpose of this study was not to evaluate the law's effects but rather to enhance the information available to villages and to guide the design of future evaluations. The report includes discussions of the history of alcohol control in Bush Alaska; community purposes and the local option law; village character, alcohol use, and control history; alcohol use patterns and regional hubs; sources of village controls; village control and state control; exercise of formal village controls; form and limitations of local ordinances governing alcohol; village control of alcohol; community conflict on the local optin law; and changes in village life since the local option law. (ABL)

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VILLAGE ALCOHOL CONTROL AND THE LOCAL OPTION LAW

A Report to the Alaska State Legislature

Thomas D. Lonner, Ph.D.
J. Kenneth Duff, M.S.W.

June 24, 1983

CG 019121

Center for Alcohol and Addiction Studies
School of Health Sciences
University of Alaska, Anchorage

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Table of Contents

		Page
I.	Introduction	I - 1
	A. Purpose of the Study	I - 1
	1. Alcohol and Community Loss	I - 1
	2. State and Village Powers	I - 4
	B. Methods	I - 5
	C. Summary of Findings	I - 12
II.	History of Alcohol Control in Bush Alaska	II - 1
	A. History of the Local Option Law in Alaska	II - 8
	B. Power, Limitations, and Uncertainties of the Local Option Law	II - 16
	1. Powers	II - 16
	2. Limitations	II - 20
	3. Uncertainties	II - 24
	4. Procedural Obstacles in Conducting a Local Option Law Election	II - 26
III.	Community Purposes and the Local Option Law	III - 1
IV.	Village Character, Alcohol Use, and Control History	IV - 1
	A. Alcohol Use	IV - 1
	1. Community Culture and History	IV - 5
	B. Village Alcohol Control Efforts	IV - 10
V.	Alcohol Use Patterns and Regional Hubs	V - 1
	A. The Introduction of Retail Sales in the Hubs	V - 6
	B. Alcohol and Quality of Life in Hubs	V - 9
	C. Villagers' Problem in Hubs	V - 12
	D. Hubs as Regional Distributors	V - 13
	E. Hubs and the Local Option Law	V - 14
VI.	The Sources of Village Controls	VI - 1
	A. Types of Formal Authority	VI - 1
	B. The Mix of Authority	VI - 3
	C. Sources of Power	VI - 6
	D. Local versus Non-Local Sources of Power	VI - 9
VII.	Village Control and State Control	VII - 1
VIII.	The Exercise of Formal Village Controls	VIII - 1
	A. Council Enforcement and Adjudication	VIII - 5
	B. The Role of Magistrates	VIII - 11
	C. Local Option Enforcement	VIII - 13
	D. The VPSO Program	VIII - 15
	E. The Role of Religion	VIII - 22
	F. External Forces and Supports	VIII - 23
IX.	The Form and Limitations of Local Ordinances Governing Alcohol	IX - 1

X.	Village Control of Alcohol	X - 1
	A. Local Ordinances	X - 1
	B. Behavior Modification and Penalties	X - 6
	C. Methods of Alcohol Control	X - 11
	D. Selective Enforcement	X - 14
	E. Symbolic Rules and Self-Indications	X - 16
	F. Real and Certain Enforcement and Penalty	X - 17
	G. Enforcement Personnel	X - 23
	H. The "Problem" of Legal Requirements	X - 25
XI.	Dividing and Deciding on the Local Option Law	XI - 1
	A. Power Conflicts	XI - 2
	B. Conflicts among Vested Economic Interests	XI - 3
	C. Conflict over Solutions	XI - 5
	D. Division over Values	XI - 6
	E. Division over Persons	XI - 6
	F. Divisions among Groups	XI - 7
	G. Divisions between Native and White Residents	XI - 11
	H. The Role of Community Support Agencies	XI - 13
	I. The Local Option Law and Inter-Community Effects	XI - 15
	J. The Local Option Law and the Electoral Process	XI - 16
XII.	Changes in Village Life Since the Local Option Law	XII - 1
	A. Changes in the Distribution of Alcohol	XII - 3
	B. Changes in Alcohol Consumption and Alcohol-Related Problems	XII - 6
	C. Immediate Village Experiences with the Local Option Law	XII - 7
	D. Perceived Changes in the Quality of Village Life	XII - 9
	E. Changing Patterns of Use	XII - 12
	1. Privatization	XII - 13
	2. Substitution	XII - 15
	3. Externalization	XII - 17
	F. The Local Option Law as a Solution to Village Problems	XII - 19
	G. The Symbolic Component of the Local Option Law	XII - 23
Appendix I	References	

I. Introduction

A. Purpose of the Study

Alaska's "local option law" is one of many efforts to combat the most significant public health problem in rural Alaska -- the loss of community members through abusive and problem drinking.

Given the recent passage of the local option law, it seemed opportune to begin the study of early implementation as soon as possible to provide useful information to both the Legislature and the communities considering the use of the law. Even though it was far too early to "evaluate" the outcomes of the law on village health and safety statistics, it was not too early to compare the local option to the purposes, history, culture, and social and political organization of the villages for whom the law was provided.

The study focused on two general relationships: 1) alcohol and community loss, and 2) state and village powers.

1. Alcohol and Community Loss

The problems stemming from the use of alcohol impact not only the drinking individual but the entire community. Due to their cultural, social, and economic origins Alaska villages operate as very large family units. Their populations are so small, inter-related, and interdependent that they become vulnerable to the negative effects associated with excessive drinking, such as suicide, domestic violence, and loss of economic opportunity. Therefore, the alcohol-related social impacts severely impair family and community morale and perpetuate a cycle of negative events.

The excessive or uncontrolled use of alcohol, in and of itself, is not likely to be the sole or principal cause of these events. It seems more likely that alcohol releases the emotions which result during periods of major economic and social upheaval and change. Loss of goals, values, identity, self-esteem and traditional roles, makes people susceptible to feelings of demoralization

and contributes to the self-destructive behaviors. These problems have been and continue to be seen as intractable, a self-perpetuating system feeding on itself and damaging the younger generations.

Given these conditions, the enactment of the new Alaska statute facilitating local control over alcohol raises many questions. The most obvious is whether the various legal options will, over time, significantly help communities to reduce negative events. A less obvious but potentially more significant product may be the growth of local and indigenous management of problems, the acquiring and successful exercise of personal and community control over important facets of community life, of which alcohol use is one important factor.

Prior to the enactment of these statutes public and private programs have provided the major effort into combating the misuse of alcohol. The goals of these programs have been (a) early identification and intervention, (b) improved case-finding and reporting in the villages, (c) increased numbers of professional village and regional counselors, (d) increased involvement by law enforcement, (e) extensive crisis intervention, (f) increased number of voluntary rescue and counselling programs, (g) referrals for treatment by the courts, (h) more referral and followup coordination, and (i) greater emphasis on prevention and education. Many of these "provider" programs are funded <u>externally</u>, are often conducted <u>away</u> from the village, and are often based on treatment of the <u>individual</u> (with the <u>community</u> situation unchanged). However, villages tend to focus somewhat less on the health/disease issues of excessive or uncontrolled alcohol use than on the specific dangerous behaviors which become a serious threat to community safety and social order.

The "local option" law creates an opportunity for communities to assess the nature of the threat and to <u>act</u> to adopt one of four enforceable ordinances

to restrict or otherwise alter behavior, and thereby to reduce threats to public safety. A number of possible consequences flow from this opportunity:

- — improving the village's identification of the problem and its particular nature and source
- -- creating a forum or other mechanism for the expression of village desires for greater internal self-control, leading to improved morale
- -- reducing the incidence of negative events in the local community
- — increasing the incidence of positive social indicators such as economic stability, family cohesion, etc.
- -- increasing the exercise by the community of additional powers such as curfews, hunting and fishing practices, speed limits
- -- increasing the village's investment in rescuing "lost" members and improving prevention among the younger generations
- -- transferring of drinking behaviors and negative consequences to regional or urban centers
- -- increasing incidence of problems in regional centers requiring programmatic and agency responses
- -- increasing the emphasis of existing "provider" programs on delivery of technical assistance to communities
- -- accentuating, even exacerbating, community divisions between drinkers and non-drinkers
- -- shifting the locus-of-control for village affairs partially to outsiders, particularly the state troopers, the non-local magistrates and the jails
- -- increasing illegal activities by outsiders and residents via bootlegging, thus creating new economic opportunities and criminal risks for villages
- -- increasing the burden on local law enforcement
- -- increasing the pressure on local residents to report violators.

Few of these changes will be apparent immediately upon village consideration of their options within the law. Long-term trends will take considerable time to evaluate. Short-term trends, based on two years' data only may be either minimal or dramatic; neither pattern can be confidently forecast to continue, given the complexity of the social organization and social controls within individual villages. Short-term trends should not be ignored, since they will help determine additional responses and supports from both public and private agencies; however, short-term data cannot answer the long-term evaluation questions -- is this a good law? can it be improved?

2. State and Village Powers

Alaska's "local option" law (under Title 04 of the Alaska Statutes) is a legal and administrative solution devised to assist local communities to exercise greater control over the availability of alcohol. The law provides an opportunity for communities to elect one of the following options: (1) that the sale of alcoholic beverages be prohibited unless sold under a community liquor license; (2) that the sale of alcoholic beverages be limited to one of several types of retail licenses (e.g., no bars but allowing for beer and wine license in a local eating establishment), (3) that the sale of alcoholic beverages be prohibited; and (4) that the sale and importation of alcoholic beverages be prohibited. The law also requires that state officials enforce the community-elected option, as appropriate.

While it is too early in the implementation of this law to evaluate the effects of recent and ongoing community elections on alcohol use, availability, and related problems, it is important to inquire about the consequences of altered and shared power arrangements among local communities and state agencies. In identifying and explaining these consequences, it will be possible for other local communities to learn about and anticipate the benefits and burdens accompanying the exercise of new powers, and for legislators, administrative agencies, and communities to assess the utility of altering power arrangements in those situations where local community and state purposes coincide.

The "local option" law is a new power available to communities, much like a new technology; lessons learned in one locale may be useful to another. Thus, this study is intended to enhance the information available to villages and to guide the design of evaluation studies in the future.

This study asked:

1. What factors predict whether a community will explore considering an election, holding an election, electing an option, and enforcing an option?

2. What benefits and burdens are important in the exercise of greater local control through heavy reliance on state agency support and involvement?

3. What, if any, personal, family, community, political, and cultural consequences do communities see as likely in electing and enforcing legal limitations on the businesses and behaviors of other residents?

4. What measures do communities use to assess the effectiveness and cost of their elected options?

5. Does the enforcement of an elected option shift a significant portion of the problem from inside the community to outside the community (e.g., law enforcement, jail, drinking in other communities, behavior and health problems in other communities)?

6. What additional lessons exist in the history of Alaskan communities in which control has been exercised over alcohol availability through municipal powers, tribal powers, and other means prior to the enactment of the current "local option" statutes?

The answers to these questions were intended to assist citizens, administrators, and legislators in:

-- designing new or amending legislation to help make the law more useful to community purposes
-- designing improved or alternative methods of agency and interagency support to meet community purposes
-- locating methods and indicators for comparing the effects of new legislation on community objectives and state purposes
-- assessing the range of costs and benefits associated with the exercise of new powers to communities and agencies.

B. Methods

Because of the number, small size, and complexity of Alaska villages, researchers often cannot avoid examining the entire social world of these villages in order to explain what is occurring within them. This study of alcohol control fell into this common pattern and led the authors into many unanticipated areas of inquiry, such as the Village Public Safety Officer program, village power structures, and so on.

This is a "qualitative" rather than a "quantitative" study; that is, the

questions were asked of many different well-informed people and their evaluations and observations constitute the base of knowledge from which our conclusions were drawn. There does not appear to be consistent, systematic quantification of important changes in village life. This limits the ability of both state agencies and villages to measure their success against their objectives in the implementation of new programs and practices. In order to examine the implications of the Local Option Law, the VPSO program, and other changes, a more precise basis of information would be required, focusing on both agency-specific and village-specific indicators of significance; that is, agency indicators of community problems are unlikely to resemble villagers' indicators of quality-of-life.

Much of the data that is collected now, by state and other agencies, is not readily comparable. Different agencies collect information based on different geographic boundaries, populations, time periods, and so on. There does not appear to be much cross-tabulation of data among agencies serving the same regions.

Tallying results without appropriate acknowledgement of contemporaneous events and conditions is also likely to disable assessment of causality; for example, increased VPSO presence is likely to result in an increase rather than decrease in the reported crime rate, although the types and severity of crime are also likely to change.

This study was not intended to evaluate the effects of the local option law on specific villages; it was intended to generalize from the comparative experiences of many villages, including those which have not considered using the local option law, those which exercise control over alcohol using powers not derived from the State, and so on. As a result, while we analyzed an extensive body of "community-specific" information, we refrain throughout this report from mentioning any community or person by name. This reflects not only regard for

the privacy, confidentiality, and reputation of villages, but for non-interference in their on-going efforts to deal with and control change.

In order to explore the basic questions of this study, the authors reviewed a vast number of documents bearing on the history of past alcohol controls, the development and characteristics of the local option law, the implementation of the law in many villages, and other outcomes of various forms of control in different villages. We were assisted in this effort by the phenomenol generosity of the Alaska Legal Services Corporation Alcohol Project staff, particularly Ms. Carole A. Baekey and Ms. Barbara Thorn; they provided access to a treasure of information which we treated with the confidentiality with which it was shared. We also analyzed additional materials provided by RurALCAP, the Alaska Department of Law, the Alaska State Troopers' Village Public Safety Officer Program, Professor Stephen Conn of the Justice Center of the University of Alaska, Anchorage, and others too numerous to note here.

This documentary review was supplemented by a large number of personal interviews with ALSC Alcohol Project staff, RurALCAP staff, the Alaska State Troopers headquarters and regional personnel, staff of the State Office on Alcoholism and Drug Abuse, state legislators, lobbyists, staff of the Alcohol Beverage Control board, legal specialists, regional and local health care and alcohol treatment providers, village public safety officers, village alcohol education counselors, magistrates, village mayors and council presidents, alcohol retailers, village elders, teachers, health aides, students, psychologists, attorneys, and others. The authors hope that they have not mis-stated the insights provided by these sources.

As noted above, the method of this study was comparative case analysis of a number of unnamed villages. This exploration required considerable on-site presence of field research investigators. This study could not have been

completed without the persistent and sensitive efforts of Mr. Fred Wemark (Northwest Alaska), Mr. Walter Newman (Yukon Flats), and a fine analyst from the Yukon-Kuskokwim region who has chosen to remain unnamed. These associates visited those communities with which they were most familiar and in which they were most welcome and drew upon a fund of knowledge, insight, and opinion which forms the base of this report. Since these associates have not had an opportunity to review this report prior to publication, the authors hope that justice has been done to their efforts and products. The study also profited greatly from the insights and suggestions of its Advisory Committee drawn from interested staff of public and private health and legal agencies.

There are two distinct but overlapping ways in which the authors determined to report the findings. The first way is historical, beginning with the history of alcohol use and controls, continuing through the development and implementation of the local option law, and tracing the history of recent experiences of villages considering the law, deciding on the law, and enforcing their elected option.

The second way is thematic, identifying the conflicts and contrasts which exist in the introduction of western legal solutions into the daily lives of remote villages and cultures. Initially, these conflicts and contrasts appear simple:

Local	Non-Local
community power	state power
Native	non-Native
traditional	Western, modern
protective	punishing
preventive	punishing
person-oriented	law-oriented
rule by consensus	rule by constitution
decentralized solutions	centralized solutions
flexible solutions	inflexible solutions
rights of the community	rights of the individual

While these characterizations appear accurate, even though somewhat extreme,

the conflicts and contrasts did not provide sufficient room to account for the wide range of actions actually occurring in villages on a daily basis. As a consequence, the following models were used; readers are encouraged to keep these models in mind as they read the findings and text of the report.

FIGURE 1

FORMS OF CONTROL

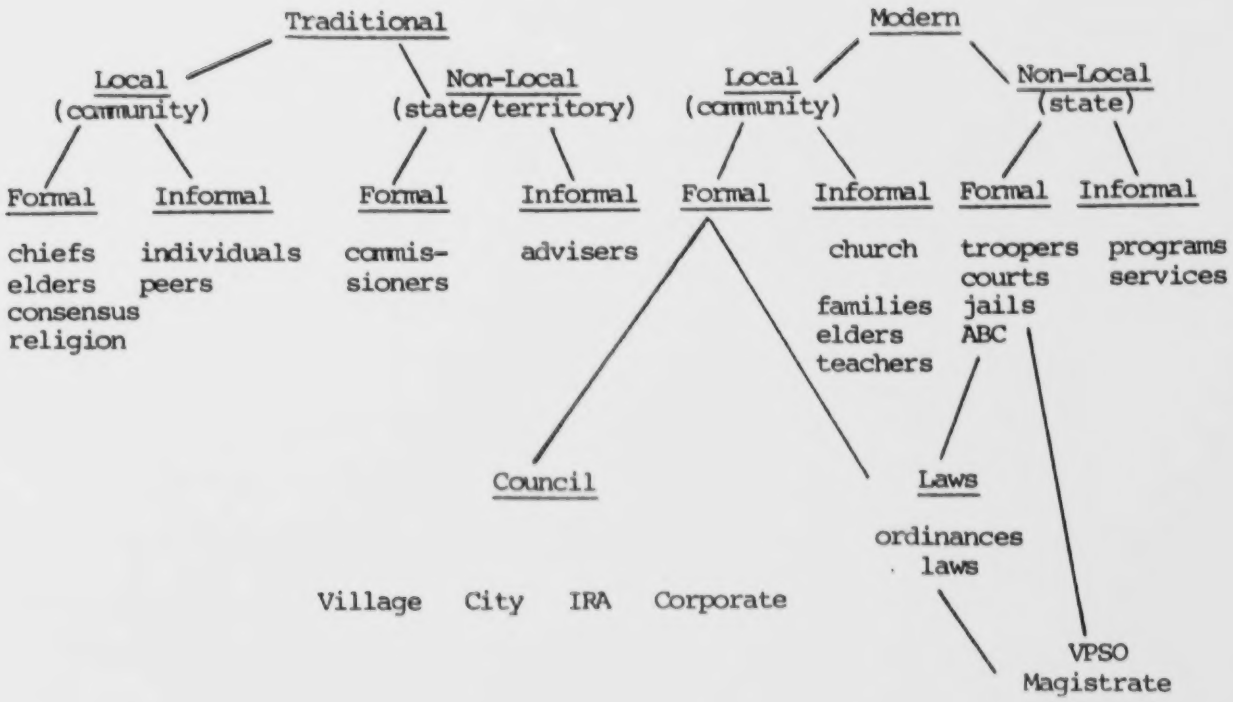
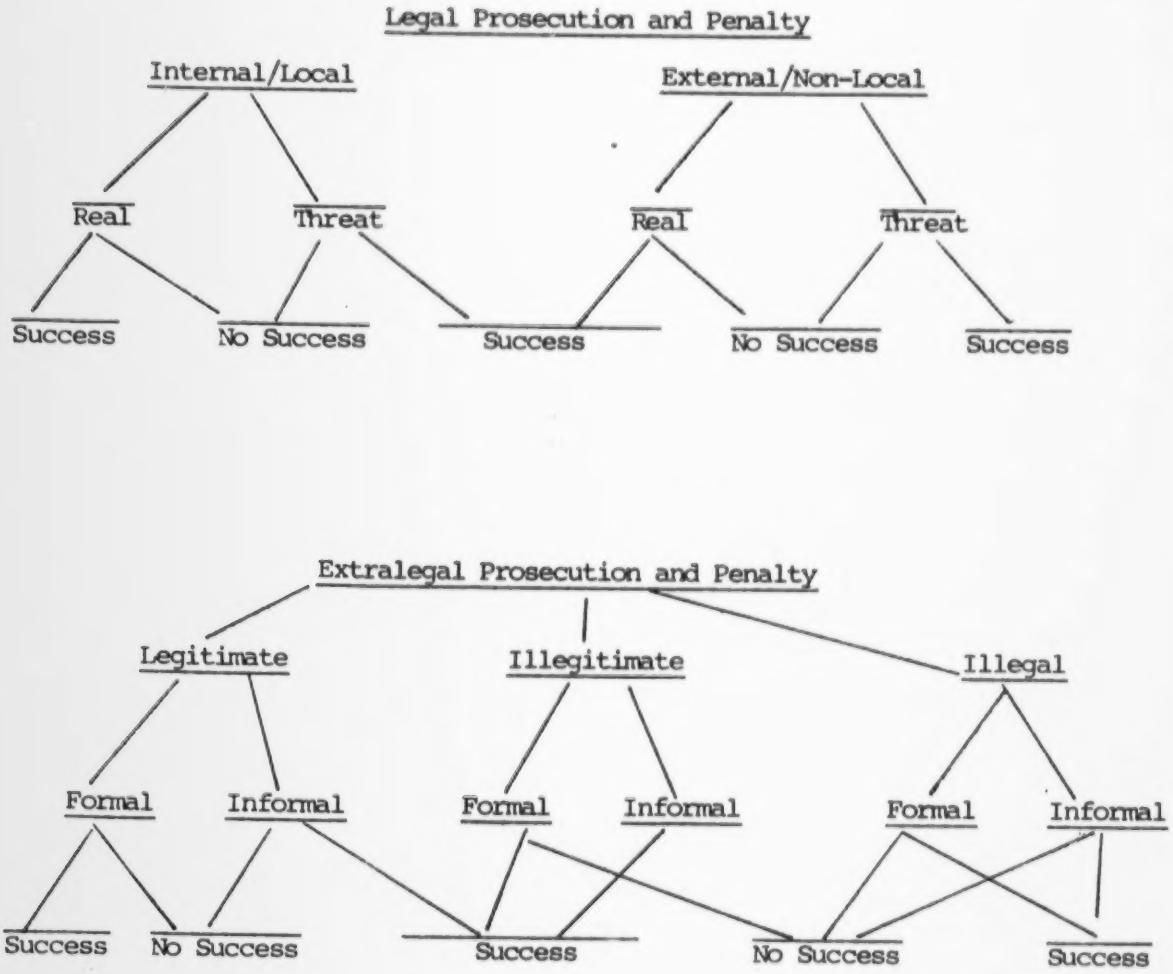


FIGURE 2

CONTROL MECHANISMS



C. Summary of Findings

The following constitute some of the most important findings which appear in the text of the report. Since the entire report is conclusionary, readers are encouraged to read those chapters which contain discussions of greatest or specific concern to them.

1. Alaska's new "local option law" is the most recent in a long line of attempts to control access to and use of alcohol by Alaska Natives. It is also one example of the continuing long-term duality between white and Native systems of law for Bush communities. While the local option law applies equally to all communities within the state, it is clear that the intention and purpose of the law was to provide Bush communities, particularly villages outside of borough jurisdiction, with new powers to control the availability of alcohol; larger communities with municipal governments already had an array of tools to control both the availability of alcohol and the behaviors associated with it. Finally, for a variety of cultural and economic reasons, it has been Native villages only which have taken advantage of the local option law. Therefore, regardless of how the statute is framed, in effect, it is a law addressed directly to village concerns.

The local option law appears to be most attractive to those communities which

a) are predominantly Native in population
b) tend not to be large regional hubs
c) tend not to be on inter-community road systems
d) tend to have had later continuous contact with outside populations and economic enterprises
e) tend not to have existing alcohol retail outlets
f) tend to be transitional communities

2. The concept of prohibition for Alaska Natives does not appear as a novel instrument for protecting villages from alcohol because villages had lived under such a ban from the purchase of Alaska by the United States until 1953. Until

the early 1960's alcohol availability for most villages did not rapidly increase, due to the lack of heavy market demand, money, transportation systems, organized legal distribution systems, and the presence of strict internal village norms and controls. The memory of many older Alaska Natives clearly retains the image of the costs and benefits of legal prohibition and the consequences of its loss in terms of loss of control over legal and illegal alcohol retailing. To the degree that village social control mechanisms have failed to effectively manage alcohol since its acquisition was legalized, much of this "failure" may be attributed to having had, for so many years, an external locus of control over alcohol, the legal tools residing with territorial officers, and access to alcohol far more intermittent than it is today.

In a relatively short space of time, entire legal systems and enforcement systems dealing with alcohol use by Natives in Alaska had been erected by, implemented by, and dismantled by powers external to Native regions and communities. Thus, within 100 years, Alaska Natives were introduced to alcohol as a valuable commodity, then were totally prohibited from its possession or use by law, then reintroduced to its legal acquisition by law once again. To the degree that external law, such as prohibition, coincided with village purposes, the loss of such law and its agents could not but have disrupted local controls. It is also likely that, as a learning experience, the "medium" became the "message;" that is, communities wishing to institute controls were more likely to turn to external law and its agents than to internal sources of control.

3. If power is known primarily through its exercise, then villages retained powers via extralegal, unsanctioned elections and ordinances as well as local enforcement and adjudication; that is, the consequences of the exercise of power were real, even if the authority of the village was only apparent or achieved through consent of the governed. There appears to have been some implied con-

sent to or support of village extralegal methods by external authorities to accomplish ends desired by both the village and external authorities, as long as these methods become neither public nor challenged.

4. Banning of importation and sale, although not of possession, was justified in arguments for the local option law which suggested that the public health problem posed by alcohol was quite great and that there is a close and substantial relationship between the means (the local option law) and the ends (limiting the magnitude and tragedy of the public health problem). The prohibition of sale and importation becomes more powerful under the local option law than under the ordinance-making power available to villages in that:

1) the local option law extends village authority over all residents and visitors, who previously may have denied the authority of the village governing bodies or systems to control sale and importation
2) the local option law extends village authority to a five mile boundary around the village
3) the local option law requires compliance by commercial carriers, under severe penalty for violations
4) the local option law requires compliance by all statewide and regional distributors
5) the local option law requires some state law enforcement and judiciary response to violations.

5. In practice, the local option law is used by Bush Alaska with Option Four (banning sale and importation) being by far the most popular choice, given village desires to severely limit, if not prohibit, access to alcohol. Were it possible for village law to totally prohibit the manufacture or possession of alcohol and to search and seize persons and premises for evidence, many villages

would choose to do so. The fact that the constitution denies them these powers is inexplicable and frustrating to them, since their motives are to save human lives, entire communities, and entire cultures. Many have translated Option Four to mean "prohibition". They (and many government agency personnel) talk about voting "dry" and having "dry" communities; becoming "dry" would mean an end to homebrew and probably the institution of unconstitutional police powers. Many villages desired both of these controls and included them in their local ordinances and on local option law petitions forwarded to and rejected by the Office of Elections.

6. Many villages, having adopted an option under the local option law, feel it necessary to pass implementing and supplementary ordinances dealing with public drunkenness, possession, search and seizure, involuntary commitment, jail and financial penalties, and so on. They appear to feel that the local option law is merely a backup to these other forms of local control, as an external threat to be used if local authority is violated; in other instances, these ordinances have been used to modify (e.g., limit, extend, alter the terms of) the option, although they do not have the power to do so. This has required on-site community legal education and technical assistance to counteract invalid, illegal, and extralegal community actions.

7. Communities turn to the local option law as a means of introducing external controls where local authority has not been found adequate in achieving control over alcohol. The methods of exercising local authority in the past have included rules adopted by a traditional council and emergency and other ordinances enacted by city councils. In order to legally adopt a local option, however, communities are required by the state to follow a relatively complex set of electoral actions and procedures. These bureaucratic procedures often constitute a more formidable obstacle to community objectives than does the

actual implementation of the option.

8. Many village residents tend not to perceive or believe the distinctions between what powers they desired and the powers actually contained in the local option law. They remained convinced that the local option law would result in "dry" villages and conveyed this understanding to other village residents. It is not surprising that, following a local election adopting one of the options, villagers would be disappointed to encounter several unanticipated realities about the law, such as no provision for universal search-and-seizure, no restriction on moderate possession, no prima facie relationship between such possession and implied importation, no assurance that the new law would not or could not be rescinded by a future election, no awareness of the complexities of evidence and legal process, high and unreasonable expectations of immediate and automatic trooper enforce-ment, and expectations that the law would be "self-executing." Older residents, in particular, expect the law to be self-executing since, in their memory of the past, some traditional community authority had been absolute in its effect.

9. Many residents were surprised that their "intentions" were not contained in nor addressed by the letter of the local option law. They "intended", as noted above, that alcohol be totally prohibited; the language used to refer to the local option law is, almost universally throughout the Bush, "dry". "Dry" means no more alcohol, no more drinking, and no more drunks in the villages; it also means the power to enforce prohibition, including an end to homebrew and the right to search for and seize privately-held alcohol. Since village residents correctly see the local option law as having been written specifically for them, they do not understand why the law did not provide them with the tools they perceived necessary to accomplish their objectives. Many also do not understand

why options other than "no sale, no importation" were provided. Rural advocates have contributed, in some degree, to village expectations that greater powers than those provided in the local option law could be or would be provided by state law, even though many villagers' purposes would have resulted in unconstitutional powers.

10. Some of the misunderstandings were due to a failure to uniformly and universally communicate to the voters the strengths and limitations of the law. This failure to communicate is due, in turn, to a combination of factors:

- lack of a thorough grounding in western law, civil rights, law enforcement procedures, and electoral procedures among Alaska Natives
- inability of agencies to transmit, in an understandable and objective fashion, a complete, authoritative, and accurate picture of rights, responsibilities, systems, and procedures
- excessive reliance on these agency communications by remote Native communities
- deliberate misinformation provided by local option law advocates and opponents; for example, one community was informed that, under Option #4, "people wouldn't be prosecuted for bringing in small amounts of booze"
- the uncertainties surrounding the real, as-yet-unexamined or untested meaning of new law; ". . .since the letter of the law formed out of statute and case law is essentially reinterpreted through direct explanations, acts, or inaction by professional operatives in rural Alaska, the message of the law as written is in fact only a portion of the whole process of legal experience for rural residents." (8, p. 28)
- the intensity of villagers' desire to have the law mean <u>what they wanted it to mean</u>
- the normal problems in communicating factual information; that is, what is said, how it is said, what is heard, what is remembered, what is translated, filtered, misunderstood, or distorted.

11. Communities evince a great deal of ingenuity and concerted effort to exercise greater control over access to alcohol, whether through their local ordinances <u>or</u> through the local option law. How they proceed to enforce either or both forms of control is predicted less on which <u>form</u> of control is the basis of their action than their <u>perception</u> that they <u>actually</u> have the power which is

being exercised. In few instances is the local option law treated as a routine and self-executing community power; in most instances, through incomplete knowledge of the limits of that law or through lack of confidence in its provisions or the state services which support it, communities devise their own understanding of the purpose, content, methods, and procedures of the law and invent their own modifications to make the law more appropriate to desired community ends and existing community organization.

12. Villages are not totally lacking in the exercise of formal and informal controls. In fact, the source for the exercise of power in the villages varies widely within the state. Some villages derive a portion of their power from the traditional authority accorded them by their members. Others derive a portion of their power from their tribal status, that is, exercising powers available to them under particular relationships with the federal government. Some derive a portion of their powers from their land status as reservation or private land; for example, two Interior villages require a license to trespass on their commonly-held private land. One of the many conditions of that license is a ban on the importation of alcohol; they control alcohol importation as a matter of contract, rather than criminal law. And, finally, some derive a portion of their power from incorporation as cities under state law.

Self-control is not a new phenomenon in rural Alaska; however, past government policies and practices, the introduction of western law, and the lack of education of rural residents in the modes of self-governance available under western law have eroded the confidence that villages have in their own integrity and control. Laws and supports like the local option law and the VPSO program result, in large measure, from the past failures of central government to resolve the problems to which it has, in part, contributed. Community self-control does not require that central government necessarily and formally

transfer power to communities. but that these communities, by exercising these powers, regain a sense of their own autonomy and strength. This "sense of community" is likely to be more predictive of positive village outcomes than would be more formal gesture of power transfer, since central government's final authority to alter power arrangements makes all gestures appear temporary at best. Since the state reserves the ability to alter law, definitions, interpretations, limitations, and classifications, the local option law cannot be considered either fixed in its meaning or even a permanent feature of state statute.

13. Communities that feel that they have maintained sovereign powers to control their internal affairs and their relationships with the outside world tend to expend more energy than other communities in the construction and enforcement of local laws. Since they do not derive their authority from larger governments or bodies of law, nor do they feel they can depend on outside law enforcement supports, they must exercise their authority continuously; it is likely that continuous exercise of authority makes it easier to continue. Characteristics of continuous law-making and enforcement in these communities include some of the following:

- signed commitment by each community member to support community laws and the actions of council members
- commitment by each community member to physically and psychologically support the law enforcement effort
- annual review, reconsideration, amendment, specification, rejection, and re-enactment of law by the entire community
- creation and maintenance of local law on a wide range of daily life matters, such as loose dogs, curfews, speed limits, truancy, drug use, drunken behavior, theft, threatening behavior, family neglect, gambling, fish and game salvage, and others
- no assignment of enforcement to specific individuals, so that responsibility rests with each and every community member
- enforcement by large numbers of persons (men, women, children, elders, council members) at the same time and place, creating mutual pride and support and de-individualization of the burden

— formal investigation, trial, and punishment methods
-- no record kept of violators except in community memory, so that there is no long-term permanent impact on the future of individuals
-- formal methods of exile with hoped-for and encouraged returns and re-integrations
-- semi-permanent exile of consistent violators, particularly violent persons and substance distributors
-- increased, rather than decreased, enforcement of alcohol restrictions during major celebrations
-- extensive monitoring of luggage and freight at point of entry into community
— immediate destruction of prohibited substances at point of entry, as the basic fine for attempted importation (rather than later trial) and as the basic social embarrassment
-- more intensive enforcement of repeated violators' activities within and without the village (through villagers or relatives reporting systems in other, particularly hub, communities)
-- convicting violators on the grounds of possession and use or using possession and use as prima facie evidence of illegal importation
-- exercising controls over visitors as well as residents
-- illegal search, seizure, and destruction of alcohol from private homes based on observed and reported possession and use
-- unaltered policy of prohibition, but methods and penalties of enforcement renewed or otherwise modified to meet new needs; for example, penalties may be stiffened by reducing the amount of basic physical support provided by peers
-- non-reliance on outside enforcement entities or procedures, since these commonly result in after-the-fact actions; the village desires and achieves immediate behavior intervention and modification.

The local option law is only one mechanism of many which encourage more community self-control.

14. There are communities which view the local option law as an unnecessary, redundant, and useless tool to reduce access to alcohol. These communities have had a long tradition of controlling access through internal formal governance (i.e., law-making, enforcement, trial, and punishment) and informal means (i.e., each community member sharing some of the active responsibility for controlling access and use). Some of the means used by these communities are legitimated by community consensus but may be illegal in that they violate the constitutional

rights of residents; lack of complaint about violations is due, in large measure, to shared cultural and community values, respect for traditional and community authority, and a desire to live within the protected confines of a conservative but healthy community, that is, a sanctuary or retreat.

The supports for the continuing tradition of enforced "dryness" appear limited in number:

-- geographic remoteness
-- late contact with the outside world
-- strong religious values from the origins of the community
-- consensus about 1) the authority of the elected or traditional government and the community itself, 2) legal and/or traditional local sovereignty, 3) the merits of a conservative range of tolerated behaviors, and 4) absolute restrictions and tough enforcement being the only means to maintain the healthy lifestyle
-- remoteness from state-supplied law enforcement agencies
-- no tradition of extensive alcohol use, related problems, or tolerance of use
-- a tradition of local law-making, continuous law enforcement, and reified attachment to the substance of the law and the pre-eminence of the law
-- pride in having a good community reputation
-- having the major penalty for law-breaking be temporary exile from community
-- ability to control or maintain distance to nearby industrial development
-- ability to control the behaviors of new Native and non-Native residents
-- a healthy continuing subsistence resource base
-- maintenance of distant relationships with government programs, resulting in reduced contact, fewer negotiated compromises, and greater self-determination
-- family and cultural obligations which require extensive visiting and, thus, close uniform scrutiny of private lives as a form of social control and support
-- members who cannot tolerate such close restriction emigrating or exporting their activities
-- members who refuse to strictly abide by community rules being closely watched, counselled, penalized, exiled
-- members who violate the rules but whose behavior is not found troublesome being watched closely but not unduly punished
-- persons who wish a retreat from more permissive communities being allowed to immigrate and settle in the village
-- continuous discussion of, voting on, and enforcement of local restrictions
-- continuous monitoring of the bad events in other communities.

15. A generation or so in the past, many communities had no "alcohol problem"; there were, to be sure, problem-drinkers and federal authorities were very concerned about bootlegging. But many communities were basically "dry" with local rules disallowing drinking. In the 1960's, as more money began to flow into villages, more alcohol flowed along with it. Villages found that they did not have the social control means to stem this flow with any great degree of success, nor the problems that emanated from this flow. In earlier times, villagers died of sickness, old age, and unavoidable accidents; more recently, younger people began to die, related to their use of alcohol. It is this change which appears to have prompted new law-making in villages, accompanied by increased law enforcement, cultural revitalization, and religious and social supports.

While most respondents note that individual, intermittent, and tragic alcohol problems have been around in villages for a long time, they suggest that alcohol as a village problem has arrived more recently and rapidly, coincident with the other rapid social and economic changes in the villages particularly in the period from the early 1950's to the late 1970's. One respondent from an Interior village suggested that the full dimension of the community alcohol problem "was so new that people didn't realize what was happening to them."

Village leaders continued to search for social control mechanisms to stem the flow of alcohol. It is not difficult to understand why, in many villages, the problem of control seemed insoluble. Alcohol was only <u>one</u> of <u>many</u> forces eroding the traditional sources and modes of authority accompanying increased contact and basic economic change. While traditional sources and modes of power continued to be exercised over traditional problem areas (such as hunting and fishing), the <u>magnitude</u>, <u>nature</u>, and <u>interactions</u> of the new problems exceeded, at least for a time, the capacity of the village to deal with them effectively. This phenomenon is not unlike that experienced by rural communities anywhere

during a "boom" period in their history. That period may not be permanent, but the problems experienced during it seem far beyond the capacity of local people to handle.

16. The villages' concern with alcohol is less a moral judgement or worry about the individual personal health implications of ingesting alcohol than with the death of village members, particularly death among the young men. The deaths of young men, while terrible personal and family tragedies, constitute a major cultural concern. Many respondents consider that the future of their culture is dependent solely on the traditional values and caliber of the future community leaders, that is, the young men of the community.

The utility of a local option law election following one or more tragic losses may be less in the solution offered by the law than in an election's ability to shift the focus of attention and emotion away from the individual loss and toward an identification of, consensus on, and action toward the underlying problem and their potential solutions. When the loss of an individual becomes understood as the loss of the community, culture, and a culture "carrier", more energy is released toward solutions and more license is granted to publicly discuss and analyze the loss rather than bury the loss in private mourning.

17. Much alcohol use and problem behavior occurs in regional hub communities. Hub residents often perceive that their behavioral problems with alcohol are caused by "outside" people, particularly visitors from surrounding villages; some feel that they do not want to "foot the bill" for these visitors. In those hubs where the behavioral problems are identified as coming from outsiders (and even occurring outside), the alcohol control, prevention, and treatment measures become focused on the behavior of individuals rather than on the availability of the substance. The public safety aspects of behavioral control (e.g., policing,

arrests, protective custody, involuntary commitment, transport for detoxification) become more prominent than alcohol control measures. The object of enforcement is to "keep a lid" on the problems, provide earlier intervention into dangerous situations, protect the intoxicated person, reduce the involvement of the judicial and corrections systems, reduce the amount of complaint by residents, reduce the paperwork for public safety officers, accomplish wholesale reductions in the numbers of public inebriates, increase the reporting by citizens by reducing the risk of serious penalty, reduce the severity of criminal actions, and not interfere with alcohol commerce.

18. It is unlikely that any hub will vote to ban sale and importation. There are several important reasons why such a vote would be unlikely:

- large numbers of white residents come from communities where alcohol is readily available and self-controlled use is common
- many hub businesses cater to tourists and other visitors who expect the amenity of alcohol
- a great deal of the alcohol use by residents is non-abusive and non-problematic
- hub residents' alcohol use is marked by regularity of location, type of drinking, drinking partners, amounts, and so on, all consistent over time
- white and Native hub residents alike will resist controls on moderate drinking
- hubs feel they have invested enough in ordinances, police, and other public safety functions to manage the uncontrolled resident and/or transient problem drinkers
- a significant proportion of public services and employment is sustained by alcohol sales and taxes
- any loss of local retail capacity will result in referring these retail dollars to Fairbanks and Anchorage
- much drinking in hubs is social, bar drinking, under the controlled hours, easily policed conditions, and the eye of sober employees who watch out for both the customers and the premises, where alcohol is available by the drink rather than the bottle or the case
- if any controls ought to be placed, some hub residents feel, they are best placed on bottle shops which lead to bootlegging
- elders, health care personnel, churchgoers, and other persons interested in stricter laws constitute a small proportion of the numbers and sentiments of the overall hub population
- because hubs already have large police powers and police

forces, the added support of state police authority would be redundant

-- in communities without existing retail sales, hub residents with an interest in local option law restrictions on sale and importation are fearful that their hub will use the local option law to expand existing use, creating additional access through Option One or Option Two.

19. Villages turn to the local option law to enable them to control the behaviors of individuals who are not controllable by other local ordinances, authorities, and social control mechanisms. The statute appears to provide the required tools for local (primarily Native) residents to control those persons who do not feel bound by local rules adopted under the authority of city councils, traditional councils, councils of elders or chiefs, or IRA councils within which they feel they or their interests are not represented.

20. The local option law appears to promise more state involvement in the enforcement of locally-elected options without, in fact, ensuring it; as a consequence, villages may be trading other legal and extra-legal methods for controlling alcohol and for the potential of increased external assistance.

21. Many respondents hoped that the local option law would return powers to the community removed over the past 30 years. They hoped that the new law would be as effective as their old laws. Yet many perceive the law to be an effective obstacle to community objectives.

These residents suggest that the state law diminished and makes invalid some of their own local ordinances and processes. The process of considering the local option law also highlights the extra-legality and illegality of some of their own effective controls.

22. Some village cultures find the law option law inconsistent with their accepted modes of community-solving. Differences occur in the arena of who

makes decisions, how decisions are made, how interventions are made into the behaviors of others, the role of informing as a form of social control, the range of acceptable control mechanisms (e.g., embarrassment, isolation, exile, jail, internal vs. external policing), and the degree of rigidity or flexibility that is desired in communitywide laws, enforcement, penalty, and rehabilitation.

The local option law, while empowering villages to control aspects of their own lives, still remains a western law. It was not designed or written by rural people and its purpose, intent, powers, procedures, language, limitations, and relationships to other parts of western law and law enforcement remain quite unclear to many rural people. Villagers also see that other, vaguely understood aspects of western law formally prohibit villages from taking actions which would solve the very problems for which they are turning to the local option law. In order for them to fully utilize the local option law, they may wittingly or unwittingly violate other laws.

In effect, villages using the local option law are not writing their own law, consistent with the underlying elements that make aggregations of individuals and families into "communities." The writing of law comes from receiving or assuming generalized powers, then convening to draft, adopt, implement, and revise one's own laws to deal directly with self-perceived problems. The use of the local option law is less an exercise in the writing of law than in trying to solve one of their most difficult problems through a complex election which adopts a pre-formulated option.

Thus, an alternative view is that goal-directed power comes from within the local community, not from state law, Indian law, or other powers provided by external, non-local authorities or systems. Education into the powers available under state and federal law appears not to expand the options perceived as available to Natives but to narrow the options they would like to use or are using to manage their problems. Conn points out that "there has been far less

enthusiasm for mounting a system of law based on cultural pluralism than in other colonial situations. It is not in the American tradition, we have been led to believe, to allow separate justice systems in a single state to coexist."

There is little evidence that local communities are "investing" themselves in the larger, external systems. They appear to be manipulating the western systems, at times, to meet local needs through maintenance of local powers; because "social control is not ultimate control in modern village Alaska" communities rely on the threat of external force, the enhanced local control authority, and the flexibility afforded by their remoteness and the consent of the governed.

In some communities, internal control is based upon the consolidation of legitimate forms of authority — traditional council, elders, city council, IRA, village corporation, and so on. This consolidation provides a single form of continuing internal self-governance. Some villages see the local option law as an avenue to dissipate this community power. Power is seen to be dissipated when 1) the electoral process replaces council authority, 2) reliance is shifted to outside agencies, 3) the state provides and legitimizes only certain methods and disallows others, while the villages continue to utilize methods deemed appropriate and legitimate to and by the village residents, and 4) formal systems remove the ability for local residents to negotiate solutions to problems. This is an opposite principle to that suggested by the local option law, that the power residing in the state is somehow shared with or shifted to the community.

23. The ingredients necessary to control alcohol-related problems include:

-- clear identification of the source of the problem
-- community consensus on the problem
-- council support of control and enforcement
-- means to control the source or supply of alcohol
-- active community and agency involvement in control activities

-- continuity of control over long periods of time
-- certitude of enforcement and penalty
-- integration of the forces of decision-making and control.

All of these factors are critical to successful accomplishment of community management of the problem as they define it. Perhaps the most difficult to accomplish for some communities is the last item -- integration of the forces of decision-making and control.

The relationships among the local option law, the city or traditional council, the village public safety officer (VPSO), the state troopers, and the local or regional judiciary are critical. Adequate enforcement depends upon the mutual support between the council and the VPSO and the mutual support between the VPSO and his/her supervising state trooper. The relationship between the VPSO and the council requires a clear commitment of the council to actively and publicly support the VPSO's mandated responsibility. The relationship between the VPSO and the state troopers requires the troopers to provide extensive and continuous skill training, close supervision and directions, short response times, and direct physical support. The more isolated the VPSO is from council support or from close trooper support, the less likely that the VPSO will be seen as an effective enforcement person. The actual numbers of VPSOs may be less significant than the maintenance of these mutual support systems.

24. There is no evidence to support an argument that the local option law, the VPSO program, or any other single action or program is responsible for the perceived improvements in quality of life for those villages that see improvements. It is more likely that many concurrent actions and events are combining to generate this impression. Other factors include health programs, alcohol prevention and treatment programs, revenue-sharing, growth of local government, slowed outmigration of young people, increased employment, positive changes in demands on and performance of leadership, increased community goal-oriented

activity, religious revival, cultural re-affirmation, and increased health awareness and practices.

25. The presence of law enforcement is absolutely critical to successful implementation of the local option law. Such law enforcement can be in the form of state troopers, city police, constables, VPSOs, council presidents or chiefs, entire councils, community committees, or the community as a whole. Each of these has its own costs and benefits. In general, the more formal the system, the more fear is created of real penalties; on the other hand, the more formal the system, the more likely that it is seen as too distant or too self-constrained (by rules of evidence, by legal charge) to be an effective deterrent. The more local the law enforcement, the more pressure can be brought to bear, by political or illegitimate means, to deter real law enforcement.

26. The effectiveness of the local option law is constrained by normal legal and police procedures, such as establishing probable cause, issuing warrants, gathering and maintaining evidence, and so on. Early in the local option law implementation process, there was a lack of civil rights knowledge and education among local law enforcement personnel as well as among residents. One of the consequences of this lack of knowledge was the development of very effective search methods applied to persons and cargo entering the community. As civil rights education improved, searches became more restricted, less enthusiastic, and less effective, resulting in reduced search effort and increased importation.

27. The stringent requirement for the proper handling of evidence coupled with many residents' reluctance to testify and the violators' knowledge of civil rights often result in an inability to assure conviction and penalty. This is particularly true for those cases which involve chronic violators who have had extensive experience with the courts, who refuse to have their cases heard by

local magistrates, who refuse to plead guilty to the charge, and who demand legal counsel. Thus, those who are most likely to be successfully prosecuted under the law are those who:

— are not chronic or serious violators

— have little prior experience with law enforcement

— freely admit their guilt to the charge

— freely accept the penalty imposed by the magistrate or council.

Since the law is least successful in curbing the behaviors of the most recalcitrant and dangerous offenders (that is, specifically those that the community wished to control through a local option), some residents view the product of this process as neither appropriate and equal justice nor meeting community objectives.

28. Non-local enforcement of laws tends to be negative, but to leave the values and minds of the offenders alone. Local enforcement tends to be positive and supportive, but to demand conformity of thinking and acting.

In conducting strict enforcement and punishment, villages seem less desirous of punishment for its own sake than to alter the boundaries of interpersonal behaviors. Exile is intended as a learning experience (e.g., learning what is in the community mind) and a boundary-setting experience, more than a permanent rejection of the offender. Even the violation of the offender's civil rights is seen as a positive act of caring for and intervention on behalf of the individual.

Communities which exile their members for repeated violations are often determined to awaken these members' awareness of community values and to protect the community and these members during the rehabilitation period. They would not be pleased to see exiled members in jail, with a criminal record, or not eventually returning to contribute to community life. In other words, com-

munity actions are never self-evident in their purposes, even though their methods appear similar to what is familiar and routine elsewhere.

29. Some simple statutes, such as the local option law, are by their nature both rigid and exact. They do not lend themselves to the flexibility of methods and selectivity of enforcement desired by many rural residents. Villages express a desire for the enforcement of local laws to be selective -- by person, practice, and season. For example, many villages will identify those persons whose access to and use of alcohol should be absolutely banned; conversely they will identify those persons whose private use is non-problematic. Selectivity may be used to control or punish "outsiders", seasonal visitors (such as miners, fishermen, firefighters, construction workser), and "bad people".

30. A significant problem for village law in transitional communities (that is, communities which no longer exercise traditional authority and which lack sufficient law enforcement and judicial control) is making the violators of laws see the resulting penalties as real and certain. Penalties appear real and certain if 1) law enforcement personnel are readily at hand, 2) judicial functions are readily at hand, and 3) conviction and penalty are not easily avoided. In those situations in which local law enforcement is absent, where communications, transportation, and logistics delay trooper response, where evidence is easily lost or mishandled, where testimony long after the fact is difficult to secure, where witnesses must leave their home communities to testify, where judicial personnel are unfamiliar with village conditions, history, organization, and persons, and where detention or other punishment cannot be assured in the village, penalties for violations are not seen as real. Even in the instances of successful arrest, prosecution, and time served in jail, the home community may not view the outcome as successful, particularly if the community views the time served as either insufficient or excessive (compared to the offense, the

situation of the offender or his family, or the standards of the community) or if the community feels that the return of the offender is threatening.

31. Some communities appear too divided or demoralized, at present, to organize themselves to utilize any of the options provided under state law. Other communities appear to have such strong and intact traditional purposes and forms of social control that they feel they have no need or less need of importing new external powers and control mechanisms. It appears that those communities that desire greater self-determination over aspects of their quality of life and whose traditional systems no longer suffice (for a variety of reasons) to meet these objectives are the most likely to look to the local option law and other tools to achieve their goals. In other words, the communities that are most likely to avail themselves of the local option law are those that are in a transition, returning to a healthier, self-controlling state; these may be communities that have experienced a twenty-year decline in quality of life due to the historical factors which have pervaded these villages. Thus, it is suggested that the local option law does not create healthier communities but that healthier communities or communities that are becoming healthier are the ones most attracted to the local option law as an additional support.

In general, the village attributes which are most likely to be predictive of holding a successful local option law are:

— a secure, activist, and strong village or city council

— a council which is not itself typified by abusive use of alcohol

— consolidation of or unanamity among all village power bases

— a population marked by stability, in terms of racial composition, migration, economy, goals, and problem rates

— a community desire and ability to identify problems, set goals, establish priorities, establish solutions, and take action as a

community.

-- other difficult goal-directed actions taken by the community which indicate that the community can exercise self-control.

32. Establishing village law through the electoral process may have a number of unanticipated consequences:

— it may make law-making and enforcement easier by reducing individuation of council members and the VPSO

— it may shift the burden of control from individuals and groups to the entire voting population

— it may be more effective than a liquor license protest because it involves more people more anonymously

— it may be another means to re-affirm already existing village standards and rules

— it may help the electorate override the weakness or opposition of the council.

On the other hand, the electoral process may be used to challenge the very roots and legitimacy of village power structures; depending on one's objectives, this may be a very good or very bad outcome. Once the roots and legitimacy have been successfully displaced, the core direction and wisdom of the village may also be lost.

33. One measure of the success of local rules on alcohol importation or use/possession is a total absence of alcohol and its use in the community. Few, if any, communities have achieved this level of success; no community touched by this study reported such success. All communities reported that drinking was still going on, which disturbs some residents more than others, depending on their level and type of concern; however, since the majority of community mem-

bers either hoped or thought that, following rule-making, there would be no drinking at all, there is often considerable disappointment at the failures -- lack of successful voluntary adherence to local rule, lack of successful enforcement tools and methods, and continuing drinking (at some level) in the community. On the other hand, since much of the community concern is with alcohol-related public behaviors and violence rather than with private drinking, communities see their law as "sort of working"; they "sort of overlook" the remaining drinking as long as behaviors do not overstep other residents' standards, rights, or safety. This creates a new synthesis, wherein law is not stringently enforced and behaviors are kept within tolerable bounds.

The combination of the local option law and the efforts of the VPSO is likely to result in earlier identification of and intervention in the development of serious problems, thus altering the number, severity, and types of agency-reported problems. It is likely that rates of less severe problems will rise, initially and dramatically, that rates of more severe problems will decline somewhat and not rise to earlier levels, and that the types of reported problems will change; for example, it is likely that alcohol importation offenses will increase, that alcohol-related deaths and other alcohol-related violence will decline, and that other substance offenses will increase as alcohol availability declines.

34. According to industry respondents and Bush retailers, while some concern existed that villages voting "dry" would reduce the business potential of hub alcohol retailers, the loss of direct access to these villages does not appear to have significantly damaged existing sales. If no significant change has occurred, this may be attributed to:

— major failures in enforcement
-- major exportation of behaviors to hubs
— lack of significant volumes having appeared previously in villages (that is, villages having populations that are

too small to show up in the statistics; a large party in a village may not appear as even a blip in the hub's statistics)
-- changes in substances used; that is, substituting distilled spirits for beer, or marijuana for alcohol
-- changes within only certain populations, resulting in only a small or immeasurable change in per capita consumption rates across aggregated populations and/or communities
-- increased unreported bootlegging or other forms of unreported distribution
-- alteration of retail merchandising and products to appeal to new, different, and growing demands within the hubs themselves (e.g., selling wines to hub residents rather than spirits to village residents).

35. The immediate objective of villages was to reduce the incidence of alcohol-related problem behavior, including violence, public drunkenness, and public drinking. Since the local option law elections, many communities have perceived a steep decline in visible drunken behavior. Whether or not this perception is correct (and it is likely to be correct), whether or not there is less actual drunkenness or drinking as distinct from visible or public drunkenness or drinking, are probably not relevant distinctions in the communities' assessment of the quality of their daily lives. Even though the volumes consumed and the number of intoxicated persons may remain the same, villages will feel positive about their actions and the effectiveness of the law based on a perceived decline in problems. They will "feel" more "dry", even though they may not be significantly more "dry".

If the overall rates and volume of consumption have not declined since the local option law, what then accounts for the declines in alcohol-related problems and visible behaviors? It is suggested that these changes are due to altered patterns of use by the using population, including:

— increased privatization of use and behaviors
-- altered and intermittent patterns of distribution and consumption
— substitution of other substances (e.g., drugs, homebrew)
— externalization of the behaviors and problems to hubs.

There is a growing, although as yet unmeasured sense, that as certain villages reduce their alcohol problem under the local option law, a portion of this reduction is actually exported to those communities which are regional hubs and/or which do not prohibit alcohol importation or sale. This will increase, to an unknown degree, the problem rate and resulting fiscal costs occurring in these hubs, particularly through their law enforcement, judicial, corrections, health care, mental health care, alcohol detoxification, and other systems.

36. What, then, is the benefit of the local option law? Some residents are under the illusion that the law is self-executing, that by passing the law, the reality will automatically change. This illusion is not without some foundation in fact. What appears to happen in some villages is that the community vote on the local option law is an elaborate reaffirmation of existing community rules. The prospect of having troopers enforce the law and having magistrates impose formidable penalties and create criminal records is seen as an immediate deterrent; as an external threat of unknown dimensions, it appears to support and mobilize the internal control mechanisms of the community and thereby produce modified behaviors among residents. The longevity of these positive changes will depend, ultimately, on 1) the reality of the threat, 2) the development of greater internal controls, and 3) significant improvements in quality of life. What is achieved by the local option law may not be control over alcohol but control over community.

II. History of Alcohol Control in Bush Alaska

Alaska's new "local option law" is the most recent in a long line of attempts to control access to and use of alcohol by Alaska Natives. It is also one example of the continuing long-term duality between white and Native systems of law for Bush communities. While the local option law applies equally to all communities within the state, it is clear that the intention and effect of the law were to provide Bush communities, particularly villages outside of borough jurisdiction, with new powers to control the availability of alcohol. Larger communities with municipal governments already had an array of tools to control both the availability of alcohol and the behaviors associated with it; for a variety of cultural and economic reasons, it has been Native villages only which have taken advantage of the local option law. Regardless of how the law was designed, in effect, it is a law addressed directly to village concerns.

The concept of prohibition for Alaska Natives does not appear as a novel instrument for protecting villagers from alcohol because villages had lived under such a ban from the purchase of Alaska by the United States until 1953. From this earlier period until the early 1960's, alcohol availability and use in most villages did not change radically, due to the lack of heavy market demand, money, transportation systems, organized legal distribution systems, and the presence of strict internal village norms and controls. Many older Alaska Natives clearly recall the image of the costs and benefits of legal prohibition and the consequences of its loss in terms of loss of control over legal and illegal alcohol retailing. To the degree that village social control mechanisms have failed to effectively manage alcohol since its acquisition was legalized, much of this "failure" may be attributed to having had, for so many years, an external locus of control over alcohol, the legal powers residing with territorial officers, and access to alcohol far more intermittent than it is today.

The concept of control is common in the history of many countries. "At the

time when the systems of control were first established, regulating the sale of alcohol was often seen as the most efficient way of reducing alcohol-related problems, and generally it was the retail section of the alcohol market that was subjected to the most elaborate controls by the state." (4, p. 78)

Legal controls alone are unlikely to reduce alcohol-related problems. Conn (2, p. 1) notes that "dependence on law only as a mechanism to change drinking problems can, in fact, exacerbate drinking problems and create among the impacted group problems with alcohol which may not otherwise have existed."

Conn's excellent paper documents the history of alcohol use and controls since white men first came to Alaska. It is briefly excerpted here so that the reader may better understand the origins of the local option law. The earliest commercial enterprises from Russia and America used alcohol as a trading commodity with Alaska Native people. The purchase of Alaska by the United States resulted in the introduction of controls on alcohol trade, importation, and possession by Natives, because the Territory of Alaska was treated as an Indian reservation. Thus, early in the history of contact was introduced both alcohol and methods for its control; both were also derived from sources external to the Territory.

The Treaty of Cession, the Organic Acts, and the Territorial government drew distinctions between "civilized and uncivilized" Natives. Civilized Natives were those "who had taken up residence separate from any tribe of Indians and who had adopted the habits of civilized life." Civilized Natives could become citizens and attend schools with the whites. However, this distinction between "civilized and uncivilized" did not extend to the ability to purchase or consume alcohol. Neither class of Native was perceived as having the ability to control its behaviors after consuming alcohol. The assumption of Native inability to exercise self-control over the use of alcohol originated with contact. Teachers

and missionaries saw suppression of drinking as "the prerequisite for civilizing the Natives;" they actively advocated law enforcement efforts "to protect Natives from whites and to protect them from themselves."

Thus, the use of external forms of power to control Native access to alcohol also originated very early. The majority of the alcohol control legislation since that time has originated externally to local communities and has had Natives as its specified or unspecified target. Results of this legislation have been to make alcohol a scarce and valuable commodity and to make its acquisition and possession so difficult that Natives consumed it totally and rapidly. Its scarcity and value resulted in large-scale bootlegging and the introduction of domestic production ("hootch", homebrew).

The First Organic Act of 1884 specifically legislated the prohibition on importation, manufacture, and sale of liquor in Alaska. However, in general, whites would neither prosecute nor convict other whites for violations of this prohibition. The Alaska Commercial Company continued to trade liquor for furs and successfully undermined enforcement efforts by withholding supplies from enforcement personnel. Revenue cutters and Territorial Indian Police were utilized to enforce prohibition, but with minimal effect. Thus, before the turn of the century, non-local controls, widespread organized violation, race-selective enforcement, and local Native enforcement personnel were all present as, to some extent, they remain today.

In the late 1880's, prohibition for whites was replaced by high license fees which, in turn, were to pay for public services. Purchase by or sale to Natives, intoxicated persons, or habitual drunkards continued to be prohibited by law. Prosecution of violations of sale restrictions was not vigorous, although public drunkenness and other drunken behaviors often resulted in jail sentences. Thus, by the turn of the century, community dependence on alcohol-generated revenues to underwrite civic government and an enforcement focus on

alcohol-related behaviors rather than sale or possession became common.

In 1915, Alaska voted the entire Territory "dry", with the primary purpose of solving the problem of Alaska Natives; Conn adduces this purpose from the records of prosecutions based on and subsequent to this "dry" law. (The Territorial legislature made the giving or selling of alcohol to Natives a misdemeanor with a minimum fine of $120 and a maximum of $500 or imprisonment of between 60 and 250 days; both parties to the violation were subject to the same penalty.) This law constituted a previous instance of passing a statewide law whose purpose was constraint of Native alcohol consumption. While Alaska's prohibition ended with the repeal of the 18th amendment in 1933, the Territorial prohibition dealing with Natives was not repealed until 1953.

The failure to achieve "dryness" was attributed to Alaska's vast distances, few prohibition officers, and the rise of home distilleries. During this period, "the single form of ongoing contact which the rural Native person experienced with territorial government was the liquor suppression officer." (2) This enforcement effort, however, was quite intermittent and basically ineffectual except in the learning of covert behaviors, a reinforcement of rapid consumption practices, and a learning of the limitations of reliance on external control mechanisms and agents. Of greater importance, however, was the continuing contact with whites, from whom Natives learned aspects of white drinking comportment and the use of alcohol as a commodity in commercial exchange.

It is important to note that, in a relatively short space of time, entire legal systems and enforcement systems dealing with alcohol use by Natives in Alaska had been erected by, implemented by, and dismantled by powers external to Native regions and communities. Thus, within eighty years, Alaska Natives were introduced to alcohol as a valuable commodity, then were totally prohibited from its possession or use by law, then reintroduced to its legal acquisition by law

once again. To the degree that external law, such as prohibition, coincided with village purposes, the loss of such law and its agents could not but have disrupted local controls. It is also likely that, as a learning experience, the "medium" became the "message;" that is, communities wishing to institute controls were more likely to turn to external law and its agents than to internal sources of control.

Conn (7, p. 67) points out that "Western law and its agents were prepared to intercede and jail drinkers...[because] this was, after all, the developed role of the town police, liquor suppression officers, territorial police, and state troopers after them. They were, after all, non-Eskimos, powerful, and free of constraints placed upon councilmen who lived and worked with the persons they confronted, their families and their friends." As the laws which guided control agents them became attenuated over time, a serious vacuum in community controls was created. With the transition of Territorial to State law at Alaska Statehood in 1959, a further erosion in law and law enforcement occurred, as race distinctions were eliminated and a single statewide court system was erected.

> "In earlier days, village councils, supported by teachers and missionaries, by territorial law where operative, and, indirectly by limited opportunities to purchase liquor for transport to the village, could focus on possession of liquor within the village, not on liquor-related conduct. By the mid-1960's, however, liquor traffic became a fixture of regional traffic. State law was not consistent in its support of liquor bans in the villages. It had legalized private use and possession of liquor." (7, p. 67-68)

In addition,

> "Though state law had removed direct responsibility over village crime from the villages, the state legal apparatus was not prepared to prevent crime in the villages or to deal with minor offenses, this in an epoch when councilmen perceived that village liquor control and action against minor offenses was the key to prevention of serious crime in the village." (7, p. 10)

> "To the further surprise of some councils who had emulated territorial commissioners and levied fines, state

police officials now informed them that this authority, along with the authority to prohibit manufacture of home brew, did not enjoy overt support of state legal officials.

The council's fining authority had given them symbolic identity with other mechanisms of white law such as the Bethel commissioner. Now it appeared that this method of identifying village legal power with state legal power would not be supported by state legal authorities.

It appeared then that the only basis of authority to be found for this form of alcohol control would be through uniform action among the Eskimo villages and not from state law." (7, p. 13)

If it had been the case that villages never had internal authority over their members, with external authority over alcohol first introduced and later removed, it would be reasonable to suggest a re-introduction of external power. However, in fact and law, incorporated and unincorporated villages did and may still have authority over the actions of their members. Conn (2) points out that the Indian Reorganization Act provided a structure of "tribal government" for Alaska Native villages, the powers of which include "legitimization of the fining and jailing authority of village councils." The statewide court system was to have replaced these village powers. Villages which incorporated as municipal governments had ordinance-making and enforcement powers. However, even unincorporated village councils continued to act as legislative and judicial authorities long after the legal basis and need to do so was to have been removed, because the centralized court system was effectively absent from the village.

If power is known primarily through its exercise, then villages retained power via extralegal, unsanctioned elections and ordinances as well as local enforcement and adjudication; that is, the consequences of the exercise of power were real, even if the authority of the village was only apparent or achieved through consent of the governed. "What is relevant is that villages continued to perceive themselves as dry and to enforce ordinances against possession or

use of alcoholic beverages with the implicit or explicit blessing of... officials." (2, p. 42) This suggests some implied consent to or support of village extralegal methods by external authorities to accomplish ends desired by both the village and external authorities, as long as these methods became neither public nor challenged; this is an understandable position, given shared concern over alcohol as a public health and safety problem, an awareness of the paucity of external controls, and a disinclination to formally empower or acknowledge the authority of the unincorporated village.

Conn (2, p. 50) points out that fluctuating laws and successful legal challenge of community authority are damaging to both community morale and local self-control. "The alcohol control law in rural Alaska taught Natives to lose faith in their own power as individuals or as groups to control and shape their own destiny." "The particular harmful effect of the introduction of liquor and occasional white legal presence preventing its use was that intoxication and white law wiped out opportunities for Native law to develop means to contain drinking behavior." (2, p. 49)

The sum of this history is a set of fluctuations and paradoxes in thinking and action:

-- alcohol is introduced from outside as a commodity, but alcohol control is introduced from outside for the good of Natives
-- Natives are taught to manufacture and use alcohol and thought to be unable to control their own use of alcohol
-- external alcohol controls are considered essential but repealed in a short span of time
-- village powers are provided in, then severely limited by Western law, while villages are told to rely on their own internal powers
-- Western law severely limits village powers, but retains the broad municipal powers of large and/or white communities that express less concern about individual access to alcohol and which have greater police powers.

It is against this paradoxical historical backdrop that the new local option law should be measured, to determine whether it is an internal or external power and

whether it is more likely than its predecessors to meet either state or village objectives.

A. History of the Local Option Law in Alaska

The international history of local controls is instructive.

> Local option, in one form or another, has traditionally been an important way of allowing dry communities to stay dry in a generally drinking society...Compared to the early 20th century, the control authority of local communities has generally decreased. This reflects, in part, the loss of power by temperance groups, who traditionally advocated local controls as a means to curtail the alcohol market. Centralized authority also reflects the tendency of the alcohol markets to expand beyond the local level. Policies concerning alcohol may have significant repercussions on other economic concerns of the state that could not be managed if local communities were permitted to make independent decisions. (4, p. 71)

> As the public emphasis regarding the nature of the social alcohol problem as a whole came to be laid more on treatment in the study period, the traditional control methods of limiting the availability of alcohol beverages came to be seen as an archaic patchwork of laws and as irrelevant to contemporary life. (4, p. 85)

Within this century, in the United States as elsewhere, there has been an increasing liberalization of attitudes toward drinking.

> "The intellectual support for liberalization measures came from sociological research on alcohol with the emergence of the "integrationist" or "socio-cultural" approach to the prevention of alcohol-related problems in the 1960s. This approach held that many problems were a product of the lack of an integrated and internalized system of norms concerning drinking activities. This could be resolved, it was argued, by the early introduction and inculcation of responsible drinking habits and through the removal of certain legal constraints and regulations. Thus, the liberalization of control was encouraged as being consistent with a healthy drinking culture." (4, p. 85)

> A similar tendency toward simpler and less discriminatory rules can be observed in the disappearance of restrictions on selling alcohol to members of ethnic or other minorities. Native Americans now have legal access to alcoholic beverages, denied to them for almost a century." (4, p. 83)

Conn (7, p. 14) reports that, in 1962:

> Councils discovered that general prohibitions of liquor backed by village consensus and historically by teacher-

missionaries and territorial officials would not receive the backing of state law. Instead, state law made them vulnerable to lawsuits if they enforced bans against manufacture of home brew or introduction of liquor into their villages.

The promised support of state law in the realm of alcohol control focused exclusively upon problems which had already begun and not on the presence of liquor as a source of trouble. From the village perspective, liquor's presence and liquor's availability were the logical points of attack by councils and state law. But, as in 1962, state legal officials offered no support to villages who wished to remain dry by curbing introduction of liquor into their communities. Support for such a position at the state level did not occur for another 15 years. (7, p. 19)

It became the liberal policy of the State that alcoholics and intoxicated persons should 1) not be criminally prosecuted for their consumption of alcoholic beverages, 2) that they should be afforded a continuum of treatment so they may lead normal lives as productive members of society, and 3) that public drunkenness did not constitute criminal behavior.

Alcohol control measures continually vacillate between substance or individual consumer control. This is an international, historic phenomena (4) which Alaska is continuing to mirror.

"In a situation of increased acceptance of drinking in everyday life, policies may tend even more toward individual control of deviant drinkers. In an era of contracting public welfare resources, this tendency may be expressed more in punitive than in treatment-oriented measures. The singling out of individuals for special handling, whether in the form of treatment or punishment, often carries with it adverse side effects, for example their permanent identification as deviants. In our view, preventive alcohol policies should, therefore, be given a high priority as an alternative to the morally inspired control of problem drinkers." (4, p. 11)

As control of the substance fails, control of the individual becomes the focus. Suggestions are made to develop individual liquor purchase licenses for those of age; movements are made to raise the drinking age; drunken driving laws are toughened; criminal penalties are sought for drunk in public; and involuntary commitment procedures are relaxed. Alaska has been entering the individual consumer control phase of this cycle over the past several years. The local

option law, although its focus is the control of the distribution of alcohol, is utilized and perceived as a means of controlling individual behavior.

There have been local option laws in the United States since 1806. Alaska communities have had some local option powers since 1962; however, these powers were restricted to communities incorporated under state law. Since Native villages had operated almost exclusively under federal law until Alaska Statehood, few were incorporated by the early 1960's. The new local option law extended alcohol-control powers in both incorporated and unincorporated communities and backed these village powers with the authority of state law and law enforcement.

Many Alaska villages had expended great energy during Territorial times to acquire greater control over the presence, use, and misuse of alcohol. In this attempt, they received strong moral and legal support from federal officials, but in sufficient fiscal and law enforcement support. With Statehood, there was a decline in all these supports because state law was far more liberal about individual access to alcohol and concentrated far more on the drinker's criminal behaviors than on community well-being. This created new crises for Alaska villages, as documented by Conn's study (7) of Yukon-Kuskokwim regional meetings on this topic in 1962, meetings attended by villages, towns, and state officials.

During this same historical period, shifts were occurring in the perceptions of the alcohol problem. Treatment agencies were emphasizing the individual disease model of alcoholism, which tended to reduce the focus on the community within which the individual was embedded. The communities, on the other hand, continued to suffer unacceptably high rates of public safety problems, including homicides, suicides, assaults, and accidents, to say nothing of the fear and distress accompanying these social indicators. The communities continued to

perceive the problem as a social control issue and requested more legal and police authority to control the problem at its source (e.g., alcohol retailers), at its distribution (e.g., cargo carriers), and at its final point (e.g., possession and use by village residents).

Village, sub-regional, and regional meetings continued through the mid-1960's, with little significant improvement in controls. In 1967-1968, the federal Office of Economic Opportunity (OEO) Special Projects Desk began to provide grants to Community Action Programs (CAP) to highlight the persistence of alcohol problems. In 1971, OEO provided the Rural Alaska Community Action Program (RurALCAP) with $100,000 to provide training to alcohol counselors in regional centers. In 1972, OEO was broken up and its Alcohol Desk was fragmented, with some parts transferred to the Indian Desk of the National Institute of Alcoholism and Alcohol Abuse (NIAAA) and grants to the National Indian Commissions on alcoholism and drug abuse.

In 1973, Alaska Senator Ted Stevens succeeded in obtaining additional funds for alcohol prevention among Alaska Natives. The RurALCAP alcohol program became part of the Alaska Native Council on Alcoholism and Drug Abuse (ANCADA); ANCADA became qualified to receive NIAAA grants for prevention. Meanwhile, RurALCAP continued with its alcohol counselor program and elicited community concerns through its annual Citizens Participation Conferences (CPC). In 1975, the CPC examined its old resolutions and addressed its concerns to the RurALCAP Board, particularly for additional funding for counselors and the training of indigenous persons for these tasks. ANCADA lobbied heavily for the dedication of alcohol excise taxes to support alcohol prevention and treatment programs.

From 1975 to 1977, the Governor and the Legislature received many alcohol-related complaints from the Bush and demands for solutions. The Administration examined a series of statewide proposed solutions and prepared a draft set of comprehensive legislative actions for consideration by the Legislature. It was

not Bush concerns alone that resulted in this package but a coalition of interests, including administrators who were seeking a new revenue base to offset the severe social costs posed by alcohol; this interest coincided with another administration hope -- that increasing the cost of alcohol would reduce its consumption and, by extension, the related social costs.

Thus, the local option law was only one of many proposals, including marked increases in alcohol excise taxes, limiting the number of new alcohol retail licenses, banning the advertising and filling of mail orders for alcohol, revenue-sharing to villages to design, fund, and staff their own alcohol prevention and treatment services, and so on. RurALCAP and ANCADA participated in the discussion of these initiatives with administrative agencies, particularly the State Office of Alcoholism and Drug Abuse (SOADA) and the Attorney General.

The draft legislation was presented to the Legislature in 1977; the Senate formed a Special Select Committee on Alcohol to deal with the entire legislative package. Members of the Committee travelled to many communities across the state, moving far too rapidly in the view of villagers, holding public hearings on the draft legislation. Some villagers appeared infuriated at what they perceived as a pro forma exercise by the Committee and wrote letters to the Tundra Times, the statewide Native newspaper, suggesting that, if the Committee were not serious, then it should not come to the villages.

The chairman of the Committee, noting these concerns, sent an outline to communities, asking them to write for the Committee their own model legislation. The response to this approach fell into two categories: 1) local control and enforcement of availability of alcohol and 2) revenue-sharing to support village-based prevention and treatment programs. There was strong support for increasing the excise tax on alcohol and disbursing this money to local governments for programs; it was also seen as a means to replace local governments'

direct dependence on local alcohol taxes. Several proposals suggested that the State reimburse any local government that opted to go "dry" for its lost alcohol tax revenues. The survey increased the impetus for enactment of the local option law, although there did not appear to be a direct correlation between the array of laws, powers, and actions that were requested and the four options that were finally provided.

The comprehensive alcohol package had many "parents", including RurALCAP, SOADA, the Governor, CPC, Alaska Federation of Natives (AFN), Alaska Legal Services Corporation (ALSC), Association of Village Council Presidents (AVCP), a major statewide conference on Bush justice, large numbers of representations from villages, an Administration interdepartmental coordinating committee, a widely-distributed analysis of the legal architecture and enforcement disjunctures dealing with alcohol, and the interest and support of a few key prominent legislators. The most prominent opposition to the package was the alcohol retail industry which was far more concerned about (and successful in defeating) increases in the excise tax on alcohol than it was about the local option portions. Industry lobbyists suggest that they left the local option portions alone in order to achieve more support from Bush legislators on the excise tax issue. They also suggest that the local option law would not hurt the industry's "bottom-line" income statewide, but would shift the site of consumption from the villages to the hubs, with a consequent shift in problems.

Only two noteworthy challenges occurred in the passage of the law, both of which failed. The first was a suggested, but failed amendment to compensate those retailers who lost their license due to a local vote against "sale". The second was a substitute vetoed bill which would have allowed for the banning of possession of alcohol, a right which is protected by the Constitution (although subject to debate) and which would therefore negate the legislation.

The Committee issued its report, the findings of which seemed to require

some legislative action. During 1979-80, little progress seemed to be made due to the intractable issue of the excise tax which divided the Administration from the Legislature. The CPC raised the issue again and invididual legislators continued their efforts at passage. The villages continued to press for various forms of prohibition, reduced access to alcohol, and reduced quantities of alcohol. They argued that counselors, taxes, police, and prevention programs were insufficient solutions without these legal controls. They expressed strong support for tough laws on the possession of both alcohol and marijuana and were frustrated by the continuing lack of these tools. Lobbying by the legislation's "parents" intensified and the package was redrafted several times.

The legislature defeated the excise tax and air freight portions of the bill and then dealt with the local option portion. The present bill was passed in 1981, over the moderate objection of the alcohol industry which saw it as another attempt to institute prohibition in Alaska.

As is often the case, the enactment of a single statute involves and, at times, contradicts portions of other statutes, thus requiring additional legislative action. As the new statute is implemented, these complications surface, requiring time-consuming modifications. From the point of view at the local level, the "evolutionary" process of refining and implementing appears as a changing of the rules of the game, resulting in both confusion and frustration.

Upon hearing of the passage of the local option law and without noting its restrictions and requirements, some villages immediately held elections and adopted restrictions on the sale and importation of alcohol. However, the law required that the State Lieutenant Governor's Office supervise the elections. This requires a community to circulate a petition for a local option law and have the petition certified by the city clerk and council prior to the conduct

of an election. Another statute also required that municipalities holding special elections also have an ordinance authorizing special elections. Communities which had held elections discovered that they would have to redo the process after additional implementing legislation was passed to authorize elections in communities which had "codified" their ordinances.

The Attorney General's office found these early elections to be invalid. This would have caused only a minor disruption had the villages been able to continue to enact their own emergency ordinances during the interim period of implementing legislation. However, the Attorney General also presented an opinion that the new local option law pre-empted the passage of emergency ordinances accomplishing local option objectives.

During the year between the enactment of the local option law and the implementing legislation, villages were left without any power to deal with their alcohol problems as they had in the past. One village, for example, wanted to pass an emergency ordinance prior to Spring "break-up", because it loses residents through the ice when alertness is impaired by alcohol. That Spring, five or six residents were reported to have died on the river due to alcohol-related accidents.

A dozen or more villages ignored the Attorney General's opinion and passed local emergency ordinances anyway, some because they required this control as an interim measure to a local option law election and others because that was the flexible legal instrument they had used on a seasonal basis to reduce their problems. Other communities, which had successfully accomplished the petition process, had their elections put on hold until the implmenting legislation was enacted, thus placing themselves at risk to exceeding the 90-day valid life of a petition.

Following implementing legislation, a community could hold a valid election as long as it adhered to all the proper procedures of both the petition and

election process. Having accomplished this, there was a possibility in 1982 that all of the elections already held would be found invalid because new provisions in the law were not sanctioned by the Federal Voting Rights Act of 1965. This Act required submission by affected areas of all changes in election procedures, whether they diminish or expand voting rights, to the Department of Justice. Either the Attorney General's Office or the municipalities themselves were required to comply with these submission requirements.

An opinion was solicited by Alaska Legal Services Corporation of the Justice Department about the application of the Voting Rights Act to the local option law. The Justice Department determined that Alaska could request an exception for these elections as a "recurrent practice." ALSC prepared a submission of the exception which was modified slightly by the State Attorney General and forwarded to the Justice Department. ALSC language is instructive on the issue:

> "The fact that the alcohol local option election process helps rural Alaskans to become 'vested' in the system, to comprehend democracy in action, to learn election procedures, to begin to comprehend a few of the intricacies of law enforcement and, most importantly, to feel some measure of control over their own lives within 'the system.' To have the state Title 04 alcohol local option law invalidated at this stage would likely serve to debilitate and alienate a wavering faith that white man's law can work for them." (5)

The exception was approved by the Justice Department in June 1982 and the village elections already held were approved retroactively. Concurrently, the Governor signed a bill exempting the use of "sacramental wine" from the local option restrictions on sale and importation of alcohol.

B. Power, Limitations, and Uncertainties of the Local Option Law

1. Powers

The local option law allows incorporated communities and "established villages" to vote on four different options on the availability of alcohol within their immediate environment. (The only communities which may not hold

local option law elections are those unincorporated communities which are within the boundaries and jurisdiction of borough or municipal governments.)

In fact, there are more than four choices, because villages are not required to hold a local option law election to retain the status quo; in addition, if they reject any or all options, it is unlikely that the status quo will have to change.

When a community holds a local option law election, it is not a popularity contest among the options with the majority winning. Each option requires a separate petition process and election and only that option which is supported by a petition appears on the ballot. As often as a petition is successfully circulated and certified, an election will be held; thus, no community decision is more permanent than the community desire to support that decision.

The local option law provides options with different degrees of flexibility. Option One authorizes the establishment of a selected license to retail alcohol from among the 17 types of licenses available. For a community without a current liquor license, Option One would constitute an expansion of sale. Adopting Option One does not reduce the ability of the community to control the conditions of operations through ordinances and through Alcohol Beverage Control investigation nor does it reduce the ability of residents to protest license issuance.

Option Two provides for a community-owned and operated alcohol retail license, whether a bar, a package store, or both. Option Two is restricted to communities with an incorporated structure which takes responsibility for the operation of the license. The license cannot be issued to or operated by a private concessionaire. Option Two would constitute an expansion of sale in a community without a licensed retailer, generates revenues to the city government, and places conditions of sale under the authority of the city council and ABC.

In a community with an existing alcohol retail license, this would entail closure of that private license within 90 days of the election; therefore, there would be a shift from private conditions of sale to public conditions of sale.

Option Three forbids the sale of alcohol within the community. In effect, this option would close any public or private retailing of alcohol that currently exists, while still allowing the individual to import, produce, possess, or consume alcohol. Option Three neither expands nor diminishes existing statutes against bootlegging, that is, selling alcohol without a license. Option Three is more popular than Options One and Two which provide for an expansion of use. Option Three, while not prohibiting the importation, manufacture, possession, or use of alcohol, expresses disapprobation of ready and unlimited access to alcohol within the community confines. Option Three actually extends community authority over retail sales; under previous conditions, a community could protest the issuance of a license by and to the ABC, which retained final authority. Under Option Three, final authority resides with the electorate.

Option Four, by far the most restrictive and popular of the options, forbids both the sale and importation of alcohol. It is not total prohibition, because it does not diminish the individual's opportunity to make or consume alcohol; possession, up to certain limits, does not constitute prima facie evidence of violation of the prohibition of sale or importation.

These options all derive their considerable authority from the power of the state, which exercises control over alcoholic beverages under the 21st Amendment. Court decisions have interpreted this power to include the right to control alcohol traffic (i.e., sale and importation); they have also established that alcohol being sold in one locale and denied in another does not deny equal protection guarantees. It also appears that the right to consume intoxicating liquors for personal use is not one of those fundamental privileges of a citizen

of the United States which no state may abridge.

Abridgement of importation and sale, although not of possession, was justified in arguments for the local option law which suggested that the public health problem posed by alcohol was quite great and that there is a close and substantial relationship between the means (the local option law) and the ends (limiting the magnitude and tragedy of the public health problem). The prohibition of sale and importation becomes more powerful under the local option law than under the ordinance-making power available to villages in that:

1) the local option law extends village authority over all residents and visitors, who previously may have denied the authority of the village governing bodies or systems to control sale and importation
2) the local option law extends village authority to a five mile boundary around the village
3) the local option law requires compliance by external commercial carriers, under severe penalty for violations
4) the local option law requires compliance by all statewide and regional distributors
5) the local option law requires some state law enforcement and judiciary response to violations.

The penalties of violations of the law are significant:

Sale Without a License

First Offense: Class "A"
Misdemeanor:
10 days to 1 year in jail and/up to a $5,000.00 fine.

Second Offense: Class "C"
Felony:**
10 days to 5 years in jail and/or up to a $50,000.00 fine.

* Bootlegging - selling liquor for profit without a license -- is against state law whether or not an alcohol local option election has been held. The same fines and sentences apply.

** Liquor sold to a minor, someone under nineteen (19) years of age, is a Class "C" Felony.

*** If the amount of liquor sold is 12 liters or more hard liquor, 24 liters or more of wine, or 45 liters or more of malt beverages, the prohibited sale is a Class "C" Felony.

Importation in Violation of Options #3 or #4

Less Than: 12 liters of hard liquor (gin, whiskey, rum, etc.) or 24 liters of wine or 45 liters of beer is a Class "A" Misdemeanor: up to 1 year in jail and/or up to a $5,000.00 fine.

More Than: 12 liters of hard liquor (gin, whiskey, rum, etc.) or 24 liters of wine or 45 liters of beer is a Class "C" Felony: up to 5 years in jail and/or up to a $50,000.00 fine.

A person can be forced to forfeit (turn over) property to the state if it is used illegally to import alcoholic beverages into an unincorporated community which has voted for the no sale-no importation option. For example, if a person flies his or her plane into a community knowing alcoholic beverages are on the plane, the plane and the liquor can be taken away by the state after proper legal proceedings.

2. Limitations

In practice, the local option law is used by Bush Alaska with Option Four being by far the most popular choice, given village desires to severely limit, if not prohibit, access to alcohol. Were it possible for village law to totally prohibit the manufacture or possession of alcohol and to search and seize persons and premises for evidence, many villages would choose to do so. The fact that the Constitution denies them these powers is inexplicable and frustrating to them, since their motives are to save human lives, entire communities, and entire cultures.

Most of the villages that have considered using the local option law consider the law to be exclusively Option Four and many have translated Option Four to mean "prohibition". They (and many government agency personnel) talk about voting "dry" and having "dry" communities; becoming "dry" would mean an end to homebrew and probably the institution of unconstitutional police powers.

Some villages desired both of these controls and included them in their local ordinances and on local option law petitions forwarded to and rejected by the Office of Elections.

The desire by agencies, particularly law enforcement, for prohibition stems less from moral attitudes about drinking or the psychology of drinkers than improved methods to achieve the objectives of villages. These personnel are supportive of possession or public drunkenness as constituting prima facie evidence of the prohibition on sale and importation. This form of legal logic would greatly facilitate, some believe, the arrest and conviction of violators, particularly those who quickly discover the weak links in the legal chain. On the other hand, other gaps remain, including the open questions of when and how the alcohol was made or obtained, under what conditions it was obtained, and so on. If public drunkenness were to constitute prima facie evidence of violation, would it also constitute sufficient probable cause to warrant search and seizure? Intensifying legal powers to achieve policing objectives may result in a rejection of the original law as too intrusive for residents. Law enforcement personnel and village residents report that they have other, less formal means to combat this gap.

In effect, the law says to villagers that they violate the law by importing alcohol into the community, but that once it is within the community, there is little or nothing the community can do about it. The village is distressed that, once past the form and letter of the law, the violator is rewarded by being allowed to freely consume his illegally-imported alcohol. This frustration is dealt with differently, by both formal and informal, local and non-local authorities, as will be explicated later in this report.

Many village residents view the alcohol problem as a regional problem, soluble only by regional action rather than by individual community action

alone. They support this view by pointing to the relationship between inter-community transportation patterns, hub alcohol retailers, and village drinking. Of course, neither the local option law nor the powers of the Alcohol Beverage Control Board encompass these inter-community ties; for example, without a borough form of government, there appears to be no way for villages surrounding a hub to influence the retailing of alcohol within that hub. The State tends to view communities as individual, unrelated entities, whereas regions often see themselves as one large community with shared problems. Although the regional hubs bear the costs and reap of the benefits of their role in the sale and distribution of goods and services, the remainder of the region reaps few benefits to offset the costs of the regional presence of alcohol.

The local option law appears to fill some, but not all the perceived gaps in the license protest process. Liquor license protests by any person or community appear to be complicated by several factors:

-- only residents of the community in which the license is to be sited appear to have any real standing; regional and intercommunity concerns appear to be peripheral
-- the protester is seen to be opposed to a particular individual license rather than opposing all retailing for the community good
-- the grounds for a successful protest seem to require either 1) considerable evidence of actual or potential violations or danger or 2) formal opposition by the governing council
-- testimony to the ABC is <u>understood</u> by some villages to require travel from the village to the city and speaking in public to strangers or for the Board to travel to the village, even though the Board tells the public that phone calls and letters also constitute testimony.

A local option law has important similarities and dissimilarities to license protest:

-- the electorate is limited to community residents
-- an individual speaks out, not as an individual, but as a member of an electorate
-- opponents to alcohol sale or importation are seen as acting on a general principle rather than on a personal level
-- opponents are not speaking to strangers but to themselves; they are not asking for, but exercising, controls.

Options Three and Four appear to reduce some of the flexibility in controls that had previously been exercised under a variety of ordinance and rule-making authority. The exercise of these earlier powers included such aspects such as limiting the amount of alcohol a person could import (e.g., bottles rather than cases of alcohol), the type of beverage (i.e., beer as opposed to spirits), the season (such as holidays and festivals), and the person (some persons are known to be less responsible or dangerous than others). On the other hand, the local option law, while considerably less flexible, remains in force (at least nominally, depending on reporting and enforcing effort) until repealed and is backed by state authority.

In order to retain or regain that flexibility, many villages, having adopted an option under the local option law, feel it necessary to pass implementing and supplementary ordinances dealing with public drunkenness, possession, search and seizure, involuntary commitment, jail and financial penalties, and so on. They appear to feel that the local option law is merely a backup to these other forms of local control, as an external threat to be used if local authority is violated; in other instances, these ordinances have been used to modify (e.g., limit, extend, alter the terms of) the option, although they do not have the power to do so. This has required on-site community legal education and technical assistance to counteract invalid, illegal, and extralegal community actions.

Another limitation, which could be altered by legislation, is the inability of unincorporated, "established villages" within borough or municipal boundaries to hold a local option law, creating the anomaly of villages outside of boroughs having more local control over alcohol availability than villages within boroughs. In those instances where village ordinance-making powers have been surrendered to boroughs, borough police are not even obliged to enforce village ordinances aimed at alcohol control.

Other limitations include:

-- the inability to regulate the importation of liquor into a federal enclave over which the U.S. exercises exclusive jurisdiction; therefore, passage of Option #4 by a community that is adjacent to a military base, FAA station, etc., cannot keep alcohol from entering the Federally owned land; it can take steps to insure against only the "unlawful diversion" of liquor into the internal commerce of the state

-- the inability to control the sale or importation of alcohol in or to lodges and work camps outside of the village boundaries

-- the inability to stop the alcohol flow at its source, the urban retailer, who may not or cannot "know" what purchasers "intend" to do with large purchased volumes.

3. Uncertainties

There remain some gray areas in the interpretation of elections and enforcement, beyond the constitutional challenges that have been raised in an initial case against a former state trooper.

One area of concern is, if a community formally rejects, by election, Option Three or Option Four, does that indicate that the community is approving the introduction of retail sales, even if community ordinances prohibit sales or are silent on the issue?

Another uncertainty includes what constitutes proper evidence of a violation. For example, is an empty bottle in a trash can evidence of a violation of a prohibition on importation? Or is that an invasion of the privacy of the resident?

A more significant area of concern involves the transportation and offloading of alcohol in or near villages which have adopted Option Four. Vehicles used to import alcohol into a no sale/no importation community can be

confiscated. Air carriers have identified unique legal problems in response to their concern of possible loss of their aircraft and have developed some unconventional means of protecting themselves.

The major, unanswered, question for air carriers is the off-loading and transporting of alcohol through a no sale/no importation community when the alcohol is destined for a community that can legally import alcohol. The alcohol is not intended for distribution within the option #4 community; but because of the transportation center status of the option #4 community, alcohol intended for legal delivery in an outlying community must pass through a community where it is illegal to import alcohol. Is it a violation of the law? Can the air carrier lose his airplane? Is it a violation if a carrier delivers alcohol <u>just outside</u> the boundary for <u>actual</u> importation by locals? How sacrosanct is the boundary and what is meant by <u>intent</u>?

The Attorney General has not rendered an opinion on this issue to date. The definition of importation and the flow of commerce will be central in resolving this issue. If the intent of the law is interpreted as meaning importation for the purpose of distribution, then offloading and transporting through will be legal. If importation is more narrowly defined, then any and all offloading and transporting would be illegal under Title 04; a constitutional challenge could be made on the grounds that the statute interferes with legitimate commerce.

In the meantime air carriers have refused to transport alcohol under these circumstances, have had employees inspect baggage, and begun querying "bush" passengers as to the content of their luggage. One pilot reportedly asked passengers if they have any breakables in their bags. If the response is "no" then he purposely "slams" the bags into the plane. If the answer is "yes" then he wants to know what it is. The potential for loss of their aircraft has made the air carriers very responsive to enforcement of the local option. What

constitutes reasonable steps an air carrier can, should, or must take is a vague area, lying somewhere between the obligation not to "knowingly transport" and passengers' rights to privacy. When a carrier can search luggage or persons or X-ray luggage for alcohol, rather than weapons, remains unclear.

4. Procedural Obstacles in Conducting a Local Option Law Election

Communities turn to the local option law as a means of introducing external controls where local authority has not been found adequate in achieving control over alcohol. The methods of exercising local authority in the past have included rules adopted by a traditional council and emergency and other ordinances enacted by city councils. In order to legally adopt a local option, however, communities are required by the state to follow a relatively complex set of actions and procedures. These bureaucratic procedures often constitute a more formidable obstacle to community objectives than does the actual implementation of the option. (For precise and well-written manuals to the law, readers should review "State of Alaska Title 4 Local Option Law for Incorporated (and Unincorporated) Communities" prepared by the Alaska Legal Services Corporation Alcohol Project and available through the Alaska Department of Community and Regional Affairs.)

In order to hold a state-sanctioned local option law election, villages and cities must:

-- petition the Office of Elections to conduct such an election

-- have their existing ordinances "codified" (if a city)

-- have an ordinance providing for "special elections" (if a city).

Thus, in order to hold an election, a series of precise pre-conditions must be met, requiring close adherence to procedures and schedules and coordination with the Office of Elections and other state offices. If any of these many preconditions are not met exactly, a community may be compelled to repeat all of the

laborious steps in order to hold an election. Some communities, already fearful of elections, tend to give up when these bureaucratic obstacles are recognized. Other communities have accepted this burden and have had to repeat the process a number of times before successfully conducting an election. Thus, the more sophisticated the city government and/or the more adamant and determined the community, the more likely that an election will actually be held.

The following are the requirements for preparing and submitting a valid petition:

1) Only registered voters may sign.
2) All signatures must be received within 90 days of the date of the first signature.
3) To be valid 35% of the number of registered voters from the last election must sign.
4) The petition must be signed in ink, and requires signatures, printed names, printed dates of signature, and printed resident addresses.
5) The completed petition must be filed 90 days before the next election.
6) Within 10 days after filing with the City Clerk, the City Clerk must certify whether or not it has sufficient and complete signatures.
   a) If not sufficient, residents have 10 days to get additional signatures.
   b) Within 10 days of refiling, the City Clerk must recertify. If rejected, it is filed as a public record.
   c) If certified "insufficient" any signer may file a protest with the mayor within 7 days of certification. The mayor shall present the protest at the next city council meeting and the council shall hear and decide the protest.
   d) If proponents cannot get enough signatures, they can file another

in six months.

7) If certified, the City Clerk presents it to the City Council at its next meeting.

8) The City Clerk and City Council must prepare an ordinance to implement the petition and submit it to the voters for election within a reasonable period of time.

9) The notice of election must have published the ordinance in full and posted in 3 obvious places.

10) The ballot must read:

"shall the sale and importation of alcoholic beverages be prohibited in _____? Yes _____ No _____"

Each of these steps has posed an obstacle for different communities due to 1) the apparent complexity of the task, 2) the manipulation of the technical system by local factions seeking to derail the effort, and 3) problems of timing which are characteristic of highly seasonal economic activities and related migration and a non-bureaucratic people. Examples of these obstacles, as experienced by different communities, include:

-- sufficient number of signatures appeared in a timely fashion, but clerk neglected to certify it for 8 months; more signatures were appended to the existing invalid petition; city officials thought the city had a valid petition, held an election; the entire process had to be repeated

-- petition lacked dates; rejected

-- notice was not posted for sufficient time; rejected

-- not posted in three places; rejected

-- sufficient signatures but exceeded 90-day limitation; rejected

-- wording incorrect "to ask the State of Alaska to hold a special election to vote the village a dry village per section AS04.10.430.";

rejected

-- developed petition based on language in newspaper account, not directions of Office of Elections; rejected

-- the major supporter of the petition died, no one followed through

-- the clerk went to fish camp and failed to certify the petition in time; rejected

-- city failed to enact a "special elections" ordinance

-- residents signing with a mark instead of signature placed incorrect mark; rejected

-- signatory failed to print either 1) name, 2) address, or 3) date; rejected

-- council delayed holding election in timely fashion

-- village mistook petition for election, thought they had voted "no sale/ no importation" by the petition alone.

The election process, itself, is fraught with some of the same difficulties as well as some of the same distortions that occur in elections elsewhere:

-- voters uncertain whether voting "no" on the ballot meant voting against alcohol or against the option

-- voters were presented with incorrect wording "ban possession and importation"

-- voters did not know whether they were prohibiting sacramental wine

-- community wanted to place all four options on ballot with highest vote-getter winning

-- election had to be repeated when mayor felt voters did not understand the ballot

-- new housing project moved registered voters, including some council members outside of city boundaries; had to petition first for annexation, hold a special annexation advisory election, have council consider and approve annexation, then hold local option law petition and election

-- IRA supported local option law and circulated valid petition which was then ignored by clerk and council

-- contested elections, signatures, registration of voters

-- option appearing on regular ballot rather than special election ballot

-- voters imported in time to register in order to defeat the initiative.

These complexities have not proved to daunt those communities and groups which were determined to enact a local option; some have had to repeat the entire process three times. It is interesting to note that, should they desire to replace an enacted option, they would first have to successfully petition that option, hold a valid election, defeat the option, circulate a petition for another desired option, hold a valid election, and approve this option. It is not surprising that some villages which have circulated petitions or held unsanctioned elections adopting an option have operated from that time as if they had met all of these legal requirements.

Although the local option law was written to be able to be used by almost all Alaska villages, towns, or boroughs, it was clear from its origins that the principal beneficiaries of the law were to be Alaska Native villages. Over time, it has become even more clear that this opportunity is used by smaller, more remote (in terms of ease of transportation), Native villages and that larger villages, sub-regional and regional transportation centers, and Bush communities with large or predominantly white populations tend to not consider using this law.

These latter communities are different in many ways from their smaller counterparts. They tend:

-- to have drinking patterns which routinely incorporate moderate and private drinking in social settings

-- to have the use of alcohol as a non-problematic component of leisure

activities

-- to have an extensive economic system wholly or partially based on alcohol (e.g., bars, package liquors, restaurants, hotels, city revenues)

-- to have intervention (e.g., police, detoxification services, treatment services, and jails) methods for the interception and control of alcohol-related behaviors

-- to have broad incorporated city powers, via ordinances, licensing, zoning, taxing, and representations to the Alcohol Beverage Control Board to flexibly control access to alcohol.

It was predictable that some communities and some regions would not be as interested as some others. Large hubs, white towns and villages, road-connected communities, and villages with a longer history of acculturation tended to express less concerted interest in the options made available under the law. Some communities expressed interest until they discovered the lack of variety and flexibility under the law; in some instances, these communities returned to their city powers to control the conditions of alcohol sale.

Two basic types of villages tended to keep the local option law at arms' length. The first type was that which was either deeply divided about the issue of alcohol control or was attached to life without such controls. The second type was that which felt that its traditional controls were sufficiently effective, that the law itself was better for "weaker" villages, and that the law would result in more and undesirable contact with the State.

At this writing, over 70 of the state's 270 villages have held a local option law election, with 55 enacting one of the options. Very few communities have considered Options #1 or #2, to allow local retailing of alcohol.

Village consideration of the local option law is based on many factors, including:

-- radio, TV, and newspaper advertisement (e.g., Tundra Times, Tundra Drums)

-- actions of neighboring communities

-- actions of the ALSC Alcohol Project and regional personnel

-- actions of village alcohol councils

-- actions of subregional alcohol counselors, mental health workers, RurALCAP, actions of the Native health corporation, and village support teams focused on violence in their community visits

-- a rash of recent negative alcohol-related events.

Communities commonly adopt a "wait and see" attitude when new opportunities or systems surface, to see how they work out elsewhere, before they invest in them themselves. News is spread most quickly by word-of-mouth, through inter-village family ties, friendships, and adjacency.

Although there are new Villager-to-Villager programs to share concerns and solutions to problems common to different regions, communities tend to know a great deal more about events and changes in their own regions because of the ease and swiftness of communications.

These communications are likely to account for the geographical spread of local option law elections. Until recently, it appeared that the Yukon-Kuskokwim Delta expressed the greatest initial interest in and attachment to the local option law. This pattern is attributed to the long history of concern about alcohol in the communities attached to Bethel, the active role of the Association of Village Council Presidents in lobbying for new control legislation, and the active efforts and presence of RurALCAP and the Village Alcohol Education Counselors in the region. In addition, remote communities on Nunivak, and Nelson Islands (as well as St. Lawrence Island in Northwest Alaska) had been attempting to acquire greater control and had also lobbied heavily to get new legislation.

Through a variety of communication linkages, the word spread rapidly

throughout the Yukon-Kuskokwim Delta, Northwest Alaska, and the Interior. The ALSC Alcohol Project was very busy responding to the information needs of many villages, some of whom were waiting to act until they had an opportunity to assess what had resulted from elections in neighboring communities. Newspapers and newsletters "kept score" on the increasing numbers of communities holding elections, congratulating them by name. Support teams from regional non-profit and health corporations also added their voice in support of elections.

The local option law placed additional burdens on both public and non-profit agencies. The Office of Elections, the Department of Community and Regional Affairs, the Department of Law, the Department of Public Safety, the state court system, RurALCAP, and the Alaska Legal Services Corporation all encountered an increase in their workload. With the exception of the three-year ALSC Alcohol Project, the state does not appear to have increased the resources of these agencies specifically to meet the increased load.

The ALSC Alcohol Project was funded via a competitive process by the State Office on Alcoholism and Drug Abuse to develop an "alcohol and law" project and to develop legal and quasi-legal approaches to the problem of alcohol abuse in Alaska. By the end of the three year project, approximately $364,000 had been expended, 74 local option law elections had been held, and 51 communities had voted for "no sale/no importation."

Without such a project and the accompanying level of funding, the responsibility for advertising and explaining the law to the villages might have been left to the network of government and non-profit agencies which had formal roles in the law. ALSC provided an ongoing, single-purpose project to be the core of implementation.

ALSC appears to have been a good choice within this network, because it:

-- had a reputation for civil rights and community activism

-- had recognition from and standing within the state's judicial system

-- had no affiliation with either the alcohol industry or the alcohol treatment industry.

ALSC played a "broker" role during these years, coordinating the different tasks and challenges in front of communities and state agencies. However, it was far more than an active conduit of legal information. It assisted other agencies to understand and fulfill their obligations, it provided as much information to communities as they could rapidly absorb, it wrote the basic documents for the state in the Voting Rights Act delay, it prepared background briefs on the legal interpretations and implications of the law, and it assisted communities in their efforts to control alcohol.

Like the other non-profit agencies encouraging communities to consider and make use of the law, the project appeared to be motivated by two overlapping or intersecting concerns -- 1) understanding and using the legal powers available to communities, and 2) helping to reduce the rate of alcohol consumption and related problems in rural villages. To the degree that, from time to time, the concern about alcohol itself may have dominated the concern about rights education, this was probably a natural response to the nature and level of expressed villagers' concerns.

On the whole, the concern of the project was more with legal than alcohol issues. Its own reports describe it as "an experimental grant designed to ascertain whether the use of legal tools would assist in the prevention of alcohol abuse."

> "The underpinnings of the ALSC grant are to cooperate with all groups knowledgeable and concerned about or involved with local community control over alcohol, to provide legal assistance whenever it is desired or requested by a community, to provide educational services and assistance on request and, generally, to provide direct legal services with respect to alcohol and breathe life into the alcohol 'local option' legislation."

This last item -- breathing life into legislation -- is perhaps the most

salient point. There was a reasonable probability that, without such a project, the legislation would have remained passively on the books, accessible to only those communities with sufficient sophistication and support from non-profit agencies. In addition, the project educated not only village residents but troopers, non-profit agencies, and others about the law.

The core ALSC project personnel worked at a hectic pace throughout the grant period, travelled a great deal, made numerous presentations to village and other meetings, wrote many letters of explanation and briefs, worked closely with allied agencies, and left carefully crafted media presentations to explain the local option law to interested persons after the project was completed. Project staff offered their services to villages which then called, wrote, or otherwise communicated some interest in the law. On occasion, only a minority of residents were interested in the law, so that project staff were sometimes addressing relatively hostile or indifferent audiences. Project staff returned to the same communities, upon invitation, to further explain the law, to explain it to new audiences, to clarify questions of legal empowerment and voting procedures, and, following an election, to discuss issues of enforcement. In effect, then, the project constituted an extraordinary effort to inform the public about legislation and to assist them in implementation.

There was, over time, a set of serious issues confronting the project. For example, there was some concern that sending a petition for each option to villages would only confuse them in their electoral process when the villages really wanted to consider only "no sale, no importation." Staff were divided over whether or not the "single petition" approach might not be paternalistic in that it did not concurrently and equally portray, in terms of rights education, <u>all</u> of the choices available to the village. Initially, the single petition approach was used, followed mid-way through the project by the "four petition" approach.

The four petition approach seemed more in keeping with the project's expressed neutrality about the outcome of elections. The project did not want to be seen, as it often was seen, as a local option law "sales job", a view derived, in large part, from the project's (and villages') perceived focus on the "prohibitionist" Options #3 and #4, and the lesser attention paid to the "expansionist" Options #1 and #2; in addition, the project also assisted communities in formulating their liquor license protest. Both of these actions may also be interpreted as merely responding to village's desires and requests.

Some observers felt, conversely, that the project gave the villages too much information, confusing them instead of "informing them of their rights." These observers did not want the project to inform the villages of the other three options. In addition, both village officials and some residents were aghast that the project staff informed the public of the limitations of the law, particularly:

-- that it did not ban possession, manufacture, or consumption

-- that it was not self-executing

-- that enforcement was constrained by constitutionally-guaranteed individual rights

-- that it superceded emergency and some other ordinances.

In particular, the project was criticized for telling villagers that they could make, possess, and consume significant volumes of homebrew even under Options #3 and #4, information that was new to some residents and viewed as "expansionist" by some meeting attendees. Some concerned persons stated that the communities would be better off without this information. The assumption was that, if residents did not know that homebrew would be legal under all conditions, the community would assume that it was illegal and would hesitate to produce it. This was another instance of the state and the project telling the

villages that, no matter how much they desired to do so, they could not vote themselves "dry."

With the voluntary end of the Project came the end of this energetic advocacy for the law. Although the Project maintained a basically nuetral position regarding the local option statute, the staff were visible and thus served to advertise the existence of the law and continued the process of community involvement.

It can be speculated that the majority of those communities interested in the local option election have already voted and that the pace of new elections will decline. The Alcohol Project not only facilitated the legal refinement of the law; but, in so doing, publicized the law and kept it "current" throughout the state. The early departure of ALSC from the implementation process may have been premature, since the villages had not yet requested it nor is the Local Government Assistance branch of DCRA (together with some assistant attorneys-general) likely to be as activist as is ALSC. Perhaps the extended presence of ALSC would have been counterproductive, had it been close to the extralegal modifications used by villages to meet their needs. It may even have resulted in ALSC representing persons violating the local option law, but whose civil rights were diminished by community extralegal enforcement methods.

There is some concern that, without the project, the powers inherent in the law will remain only passively available and that villages will have to expend more energy trying to locate their newly available power. There is also concern that the experienced limitations of the law, its failures in some cases to meet community objectives, and the potential bureaucratizing of village concerns and education might limit its overall utilization by villages.

It is too early to assess the overall role of the project in the implementation of the law. Until more communities experience assistance from government and non-profit agencies in their quest for alcohol control information and legal

training, no such assessment can be made. However, the authors cannot leave this topic without mentioning one significant issue. Throughout the development and implementation of the local option law, ALSC project staff initially seemed to take for granted the appropriateness of state-designed external legal solutions to a basic problem of social health and community self-governance. Consequently they became active agents of acculturative change, not significantly dissimilar from the historical forces of western change which have, in part, created social "dis-ease" in Native villages. By "making the law work", rather than merely communicating information, some other advisory options may have been forestalled. Perhaps there is no avoiding the fact that "simply" providing a package of legal and electoral information inevitably contains the potential for catalyzing unplanned significant change in the personal and communal life of villages. This is particularly sensitive when the issue is not only law, but the power of self-governance.

III. Community Purposes and the Local Option Law

What purposes do community residents seek to accomplish, if possible, through the local option law? Conn (7, p. 43) notes that in 1962,

> "Eskimo Representatives constantly probed the illusive, seemingly irrational state law system for answers to the liquor problem as they understood it. They perceived the key to the liquor problem to be the supply available to young men who endangered themselves and others as they traveled from the town to the village and as they traveled into the villages. The representatives of state law emphasized the restrictions which the law placed on control of alcohol supply and suggested that these could be overcome by prevention at the village level by the council and, secondarily, by state police. State legal representatives offered no solution to the apparent chain of causation between the liquor store in (the regional hub) and accidents and deaths in the river and the village."

It was clear in 1962 and remains clear today that the villages' concern with alcohol is neither a moral judgement nor worry about the individual personal health implications of ingesting alcohol; the basic concern is the death of village members, particularly death among the young men. The deaths of young men, while terrible personal and family tragedies, constitute a major cultural concern. Many respondents consider that the future of their culture is dependent solely on the traditional values and the caliber of the future community leaders, that is, the young men of the community. They see youth and young people damaged by alcohol (through absenteeism from school, failure in school, disciplinary problems, work incompetence, excessive immediate self-gratification, accidents, suicides) and attempt to enlist parents, other adults, teachers, police, and others in controlling alcohol use. The language used to support alcohol control measures is replete with references to "protecting my people" and ensuring that "children can become the leaders."

Holding a local option law is a reaction to the successful control efforts of other villages, to the failure of past alcohol-control efforts, and to the tragic events, such as homicides, suicides, and accidents which continue to be

the most pressing public health problem in Native villages. The threat that alcohol poses to health is less in the area of serious but delayed effects, such as cirrhosis, alcoholism, and fetal alcohol syndrome, than in the immediate effects on mortality. The delayed effects are considered dangerous as well, but have some of the elusiveness that characterizes the village view of drugs; that is, effects such as decreased performance and inability to concentrate are viewed as somewhat less visible and critical than the public safety problem of dangerous alcohol-related violence. However, the education and prevention programs are now increasing the awareness of long-term health implications of drinking.

While everyone in a village becomes rapidly aware of alcohol-related violence, the awareness of and knowledge about alcohol use and personal problems appear nonrandomly distributed throughout a community. For example, the health aide is most likely to have a regular and routine flow of information due to his/her role in dealing with the medical and psychological correlates and consequences of alcohol use. This information is seldom transmitted to the village due to the confidential nature of such information.

Other members of the community are likely to have a less well-defined awareness of the problems, relying primarily on only those behaviors that are visible and, therefore, of public concern. Behavior that occurs in private remains far less visible or of concern to residents. For example, the importation, use, and consequent behavior of much drug use remains invisible. Drugs are easily transported and the behavioral signs accompanying the use are not familiar to all community residents. Thus, the community concern about drugs often is based more on hearsay than on direct observation.

Alcohol, on the other hand, commonly leads to a state of violence and serious negative events. Negative community events are a better predictor of village consideration of a local option law election than is technology transfer

from adjacent or connected villages. Unavoidable awareness of the problem and the promise of a potential solution are the critical elements in the village process.

Perhaps because a local option law election provides the first opportunity for all resident adults to record their view on alcohol, the petition-electoral process may assist in a redefinition of the problem. In some villages, for example, past meetings about the alcohol problem have been followed by attendees becoming drunk. They may have agreed on the collective problem (e.g., violence, victimization, fear, loss), but not seen themselves as part of that problem. An election may suggest that they are, indeed, part of the problem or, at least, that the common good requires them to participate in the collective response.

The utility of a local option law election following one or more tragic losses may be less in the solution offered by the law than in an election's ability to shift the focus of attention and emotion away from the individual loss and toward an identification of, consensus on, and action toward the underlying problem and its potential solutions. When the loss of an individual becomes understood as the loss of the community, culture, and a culture "carrier", more energy is released toward solutions and more license is granted to publicly discuss and analyze the loss rather than bury the loss in private mourning.

In some communities, it was reported that, after the local option law election was held, residents became more involved in community affairs unrelated to alcohol-control; residents suggest that the election process has helped them make other types of communitywide decisions.

It is possible that holding a local option law election is indicative of a village already in control or in the process of acquiring control over itself and its future; thus, the defeat of an option in a local option law election may be less significant in that community's life than another community's inability

to hold an election to come to grips with its problem. It is suggested that a local option law election may not create a healthy community but may be indicative that a community is becoming healthier.

In the petition election process, the community discussion of the problem and the establishment of community consensus became the important products. Certain communities decide not to petition to hold an election because they feel they can more effectively enact their own control measures. Other communities soundly defeated an option and subsequently passed their own unique ordinances which more exactly matched their local needs.

The local option law was reported to have contributed to significant consciousness-raising in the communities. Immediately upon enactment, state agencies were inundated with village-initiated contacts and questions. Having a concrete new tool seemed to mobilize community action that had been dormant due to lack of means to effectuate objectives.

Many community members hope that the selected option will be self-executing, that is, that the community decision, having been made, will:

-- will not require extensive reporting of members to enforcement authority

-- will not require extensive enforcement by internal or external authorities

-- will not be regularly or significantly violated

-- will result in an end to the manufacture, importation, sale, possession, presence, use, and consumption of alcohol

-- will be a permanent feature of community life and custom.

In effect, these members hope that the simple action of achieving consensus through the election process will result in these positive changes. This somewhat "magical" set of changes is derived in part from their fear of continued alcohol availability and from the imagery of traditional law.

Older residents, in particular, expect the law to be self-executing since, in their memory of the past, some of the traditional authority had been absolute in its effect. Other community members somewhat more realistically anticipate a rapid increase in required enforcement effort and the development of credible penalties.

Those who expected the law to be self-executing were most disappointed to discover the limitations of the law and the law enforcement system, the freedom of action displayed by other members, the potential impermanence of the decision, and the necessity for a variety of additional community efforts. Some communities appear unprepared for these additional social and cultural costs and unwilling to meet these costs.

Many were surprised that their "intentions" were not contained in nor addressed by the letter of the local option law. They "intended", as noted above, that alcohol be totally prohibited; the language used to refer to the local option law is, almost universally throughout the Bush, "dry". "Dry" means no more alcohol, no more drinking, and no more drunks in the villages; it also means the power to enforce prohibition, including an end to homebrew and the right to search for and seize privately-held alcohol. Since village residents correctly see the local option law as having been written <u>specifically</u> for them, they do not understand why the law did not provide them with the tools necessary to accomplish their objectives. Many also do not understand why options other than "no sale, no importation" were provided. Rural advocates have contributed, in some degree, to village expectations that greater powers than those provided in the local option law could be or would be provided by state law, even though many villagers' purposes would have resulted in unconstitutional powers.

While many communities eagerly took advantage of the local option law, particularly Option #4, most did not view this most stringent option as the most

effective tool. Many suggested that they would have voted for "no possession", "search and seizure". Some communities were enforcing "no possession" and "search and seizure", until they were challenged on the legality of their actions or counselled by state troopers and magistrates. These communities were attempting to achieve "dryness", not a more "normal" state.

Many who listened carefully to ALSC presentations were horrified to find that ALSC not only explained that "no sale, no importation" did not mean "dry", but that ALSC, by pointing out the right to make and consume homebrew, seemed, by extension, to be encouraging its use. Others attending the same meetings tended to either not perceive or believe the distinctions made by ALSC, remained convinced that the local option law would result in "dry" villages, and conveyed this understanding to other village residents. It is not surprising that, following a local election adopting one of the options, villagers would be disappointed to encounter several unanticipated realities about the law, such as no provision for search-and-seizure, no restriction on possession, no prima facie relationship between possession and implied importation, no assurance that the new law would not or could not be rescinded by a future election, no awareness of the complexities of evidence and legal process, high and unreasonable expectations of immediate and automatic trooper enforcement, and expectations that the law would be "self-executing."

It is apparent that villagers also were unaware of:

-- their increased responsibility for reporting on, swearing out complaints against, and testifying in court about their relatives and friends

-- the potential ability to use a local option law election to introduce alcohol sales in the community.

The misunderstandings surrounding the law are many and important, regardless of the great efforts of ALSC and other agencies to communicate the law and its implications completely.

Purposes and concerns contained in the village decision-making process included unusual uncertainty. Villages were uncertain not only about the purposes served and procedures required in selecting an option, but the potential loss of control over penalties they think are appropriate for both the offender and the community. They believe that the penalty for misdemeanors are mandatory. They also appear to equate misdemeanors and felonies, expecting that a local offender importing a single bottle might be liable to a $5000 fine or a jail sentence. They are uncertain whether the local and non-local magistrates will respond to community desires for either very stern and/or very flexible penalties for local offenders, depending on who the offenders are and the risk they are perceived to pose for the community. Both incorporated and unincorporated communities are uncertain about the implications of the local option law on village (or city) council governance; that is, these communities often resolve community problems through the rule-making or ordinance-making function of the council. Direct electorate voting is less common and voters are uncertain whether government will, may, or must pass implementing ordinances (definitions, penalties) or whether the terms of the option may be modified (strengthened, weakened, or altered) by council action; for example, some communities have expressed a desire to relax the rules or the enforcement during specific periods of celebration and do not know whether they or their council can accomplish this.

Some felt that a successful local option law election resulted in a new community power -- the ability to become "dry" by implementing ordinances. They seemed to desire more legal assistance in "writing up" these implementing ordinances 1) to meet community conditions and needs and 2) to be enforced by troopers and the courts. In effect, then, their view of the law is not a selection among options provided by the state, but a new power supporting and imple-

mented by more traditional and local means.

It is clear that the discrepancy between the perceived powers and real powers was not discovered in most comunities until after the local option law had been held. Many elections were the result of a rush of events -- a failure of an emergency ordinance, a recent series of tragic events, excitement in the news of a local option law, a visit by the ALSC alcohol project and/or other interested agency, and so on. It was only in the implementation stage that the discrepancy was discovered; this discovery was often accompanied by demoralization and/or a renewed intense commitment to achieve their intentions, regardless of what they had been informed was possible under the law.

Why did these misunderstandings occur and could they have been avoided? Some of the misunderstandings were due to a failure to uniformly and universally communicate to the voters the strengths and limitations of the law. This failure to communicate is due, in turn, to a combination of factors:

-- lack of a thorough grounding in western law, civil rights, law enforcement procedures, and electoral procedures among Alaska Natives

-- inability of agencies to transmit, in an understandable and objective fashion, a complete, authoritative, and accurate picture of rights, responsibilities, systems, and procedures

-- excessive reliance on these agency communications by remote Native communities

-- deliberate misinformation provided by local option law advocates and opponents; for example, one community was informed that, under Option #4, "people wouldn't be prosecuted for bringing in small amounts of booze"

-- the uncertainties surrounding the real, as-yet-unexamined or untested meaning of new law; "...since the letter of the law formed out of statute and case law is essentially reinterpreted through direct explanations, acts, or inaction by professional operatives in rural

Alaska, the message of the law as written is in fact only a portion of the whole process of legal experience for rural residents." (8, p. 28)

-- the intensity of villagers' desire to have the law mean what they wanted it to mean

-- the normal problems in communicating factual information; that is, what is said, how it is said, what is heard, what is remembered, what is translated, filtered, misunderstood, or distorted.

Since many villagers did not attend ALSC community meetings, these villagers had to rely upon use of media and information from those who had attended these meetings. Since the local option law has implications far beyond the language of the law, the interpretation of these implications becomes quite complex. Deliberate and accidental distortions leave residents unprepared for later realities. Corrections of these misperceptions are often not heard, translated, or accepted by voters.

It is clear that whoever controls information in these communities will have a great deal of control over the outcomes of elections. In the zealousness and righteousness of the alcohol-control effort, much of the dissemination of information will, of course, be selective. In some ways, no matter how thoroughly and clearly the factual information presented by visiting agencies may be, later discussions will still revolve around what people wanted to hear and thought they heard; the election will be the result of these later discussions more than of the factual information.

This suggests that it may be insufficient to provide legal education and assistance to a community only in advance of a local option law election; even more assistance may be required following such an election, to properly inform the citizens, the council, the local law enforcement entity, and the local magistrates. Failure to do so may result in significant dislocations and

decline of community morale.

IV. Village Character, Alcohol Use, and Control History

A. Alcohol Use

There is a popularly-held belief that Alaska Natives have a special problem with alcohol, that somehow they are uniquely susceptible to its effects, unable to control its use, and unable to control their behavior when intoxicated. This special problem, it is suggested, forecloses their ability to be subject to social controls while drinking. This belief is directly supportive of a particular remedy external to the individual or group -- prohibition, in any of its several forms.

An alternative view is that Native drinking patterns parallel the changing drinking patterns as they are manifest in the United States and elsewhere. This view suggests that Native drinking patterns are new behaviors learned from observation of the white men who first brought alcohol to Alaska and of white men seen intoxicated in regional centers. These patterns of consumption and intoxicated behaviors, it is thought, were modified by the peculiar patterns of distribution and law enforcement in earlier times and are now further modified by functional social purposes of alcohol use in modern Alaska villages and towns. In this perspective, alcohol use is a form of self-medication during a period of unacceptable rates of loss and change. In this regard, the villages' attempt to prohibit access to alcohol is based on the same consideration -- an unacceptable rate of loss, through death and disability, of its valued young people.

In this latter view, "Native drinking" is really "poverty drinking", the result of demoralization, loss of control, loss of roles, and intermittent access to money, indistinguishable from drinking in American urban ghettos. As men lose their economic roles, as women find greater access to wage employment, as young people's access to alcohol increases, and as alcohol use becomes part of peer interactions, patterned learned drinking behavior becomes a routine part

of community life.

The learned behavior that often results is binge drinking and drinking that finishes only when the alcohol runs out. The other behaviors that are learned are drinking for social closeness, stress release, and to improve morale.

There is no clear indicator which of the two perspectives about "Native drinking" noted earlier is going to prove more useful in decreasing the rate of negative events. However, it is quite likely that prohibiting the sale and importation of alcohol alone is going to be an insufficient response to the greater problem of demoralization and loss. Depending on what measure one uses, alcohol use and abuse, no matter how prevalent and pernicious in the lives of Native families and villages, probably should not yet be considered to be a universal or permanent cultural phenomenon in their lives; that is, were these multitudinous and uncontrolled transitions in their lives to slow or cease or were they to feel less powerless and alienated when dealing with change, alcohol might cease to be such a universal solvent. To the degree that alcohol is not yet a "cultural factor", limiting its availability by edict will be of less cultural significance than whether the edict derives from and is consistent with more important cultural factors such as kinship, family, leadership, authority, rule-making, social control, and the expression of feelings.

Attitudes toward drinking, drinking patterns themselves, and approaches to drinkers and their behaviors vary widely across Alaska regions, based on both cultural and historical differences. Culture dictates much in terms of thinking and, therefore, drinking patterns. Some cultures perceive reality in terms of absolutes, good/bad, white/black, wet/dry, leading them to seek absolutistic solutions, such as prohibition, no possession, and so on. Other cultures are far more relativistic, leading to the notion of drinking in moderation and moderate forms of social control and intervention into others' lives.

In an absolutistic culture, where there is only wetness and dryness, the result of all drinking is to get drunk, not a purpose but an inevitable conclusion. This is compounded where the missionaries have taught that the "devil is in the bottle", not in the person. This means that a bad event or behavior is not "my fault" or "his fault", but the "bottle's fault", thus exonerating the person from the negative results of drunk behavior. When violence is explained by "the bottle", community panic sets in when the same violence occurs without preceding drinking, without being "under the influence". Domestic violence when sober has no explanation, excuse, or rationale in a village and is viewed as far more dangerous than the same abuse when drinking. Without alcohol, the behaviors, the locations, or the victims would have to change, since direct personal responsibility for violations of cultural rules could not be diverted to "the bottle".

The more that alcohol is accepted as a functional substance, the greater, of course, will be the difficulty of designing, enacting and enforcing appropriate controls in the use of alcohol and behaviors while using alcohol. The more that villages view themselves collectively as unable to drink and behave in moderation, the more difficult it will be to believe in the exercise of local or internal social controls.

Drinking serves a number of social functions in Alaska villages, only some of which have been explicitly explored. The behaviors which are related to the function being served may be viewed as either positive or negative, depending on the values of the individuals and observers involved. Most societies provide some form of "time out" ceremonies or rites, during which members are sanctioned to vent their feelings. Often, the smaller and more closed the society, the more necessary it is to use these accepted opportunities. The social functions of drinking, celebration, release of tension, and relaxation are recognized by community members in the evaluation of "exceptional" behavior. In some areas

(1, p. 84-7), drinking is a dominant social activity which "retains the flavor of the traditional ceremony." It releases pent-up emotions and the strain of work, but is not disruptive to community, family, or work roles.

These periods of release do not always occur in the villages. In those communities which have traditionally disapproved of alcohol or successfully controlled alcohol, it is common for residents to "party" away from the village, particularly in the hub communities. It is common for these persons to be reported back to their communities as appearing to be "a totally different person." These persons also tend to not bring back their alcohol or related behaviors with them on their return.

In other settings, particularly those where residents may feel powerless and alienated from important aspects of their lives, drinking behavior becomes negative and often violent. It is these behaviors that give rise to the consideration of placing controls on alcohol. Availability of alcohol may be less significant than availability combined with these significant emotions.

Role loss during periods of major economic transition and displacement places individuals at great risk to alcohol related dependency and problems. While, for the whites, an adult is known because he/she "behaves as an adult," for Native cultures, an adult is known because he/she "is needed to do adult things." Among Natives, loss of adult tasks leads to a form of infantilization. Loss of roles, via loss of traditional economic tasks, decision-making authority, and family organization, results from a variety of sources -- changes in community economy, wage employment, subsistence employment, education, travel, marriage, religion, and governance -- most of which are not directly under direct community control.

Alternately, new non-traditional and stressful roles create hazards for individual residents. Different roles in the village (such as council

member, mayor, health aide, alcohol counselor, VPSO) result in different stresses, making these persons most vulnerable to bad events. For example, a health aide has complex and important tasks, is available 24 hours a day, has access to drugs, carries around the weight of intimate (culturally inappropriate) knowledge of physical and social facts in the community, has to appear unbiased, has great medical responsibility without either the technical skills or organizational ability to divert the responsibility, and internalizes many community problems as the community assigns its responsibilities for health to specific individuals.

Some of the healthiest people in the community may be at the highest risk for serious alcohol problems due to the social pressure related to their performing well on the village's behalf. These persons, who appear most successful to outside observers by their standards, are in reality doing everything to meet everyone else's expectations. This is, in actuality, a loss of control over their own lives and a tying of their own fates to events in the uncontrolled real world. Their feeling of loss of control over their lives often leads to unhappy personal outcomes.

1. Community Culture and History

There does not appear to be a single generalizable model of alcohol use encompassing all Alaska Native villages. Each community appears to have its own changing rhythm of drinking over time, based on its

-- geographic isolation

-- historical isolation

-- economic isolation

-- political isolation

-- religious character

-- traditional character

-- cultural controls

-- social controls

-- family controls

-- availability of alcohol.

These factors, among others, combine to form what may best be called the "culture" of villages. Villages have characteristics which precede the use patterns of individuals; that is, a village will have a culture which will dictate what is considered appropriate of permissable in the function and use of substances. What one does under or together with the use of alcohol is, in a sense, meeting the expectations of others. This accounts for the surprise experienced by drinking persons when their behaviors are rejected in non-home communities.

Drinking patterns and problem-solving techniques (such as suicide) are determined by the village culture; as one result, suicides are perceived to be somewhat less conceptually troubling to those villages where suicide is considered to be a normative means of solving problems. For example, one suicide-ridden village will not see itself as troubled because it is so accepting of bad events. It will not see that its old people hide in their homes in the dark while parties are going on, in the hope of being left alone by abusive drinkers. It will not admit how much anger there is, expressed in prejudice against outsiders, such as whites and others, and in the turning of anger against themselves and others. Thus, a village culture contains many of the roots of drinking <u>patterns</u>, <u>rationales</u>, <u>excuses</u>, and <u>behaviors</u>; persons often act in accordance with the expectations that are communicated to them by the village.

A significant part of village culture is attributable to changes induced by contact with outsiders. We have suggested that alcohol use was a relatively recent phenomenon in the lives of Alaska Natives, particularly compared to their long cultural development prior to contact with whites. While contact extends

back over one hundred years, contact did not occur simultaneously or ubiquitously for all Natives in all regions.

Coastal people were first to encounter Russian and American commercial ventures, through trading, whaling, and so on. These contacts led to an introduction to alcohol as a valued commodity and also to the skills for home-brewing and distilling. These early contacts also led to the introduction of western religion and language, the outlawing of traditional religious practice and traditional language, and an induced dependency upon western goods. Alcohol occupied a central role as both a commodity of exchange and a replacement for banned ceremonial activity (1, p. 20).

Many Interior people tended to encounter westerners at a later time, through western exploration, trapping, mining, missionary work, and other enterprises. Many communities remained remote from these contract due to their geographic and resource situation. Some elderly Alaska Natives, alive today, retain the vivid memory of when they, as children, and their parents saw their first white man.

In the late 1800's and early 1900's, most village Natives made their living hunting, fishing, and trapping, as they had always done. They would drink on their intermittent visits to the trading hubs until their money or goods were gone or the homebrew was finished, and then return to their village "dry". It was primarily Natives residing in hubs who had serious alcohol problems, due to their proximity to wages, a ready source of alcohol, and the white role models.

Periodic visits by territorial commissioners and officers, during whaling and open ice periods, would result in the confiscation of alcohol possessed or made by Natives and the brief arrest of the offender. Outsiders were seen to have introduced the alcohol and outsiders were seen as the force required to remove it. During this period of intermittent supply and covert use, Natives learned the value of consuming all the available alcohol immediately or running

the risk of losing it.

In the 1910's and 1920's, bootlegging became a more prominent economic activity, while enforcement continued to lag behind. More homebrew and moonshine became available in both white and Native communities. Natives continued to drink primarily in the trading hubs visited seasonally by barges or steamboat and, only secondarily, in the villages visited by traders. As trading and transportation increased and improved, the hub villages were literally "turned upside down", unable to control, protect, or care for themselves.

In the 1920's, there was a great increase in the making and consumption of homebrew due to the 18th Amendment; this source declined steadily over the ensuing fifty years, although it continues to be a problem for many villages. Federal marshals provided what enforcement assistance there was and, in the memory of some older Natives, were more effective than is the current system of protection.

In the 1930's and 1940's, there was a decline in subsistence economic activities, and a rise in the number of schools, wage jobs, and the population and roles of hubs. Increases in the availability of cash and regular visitation to hubs resulted in the major change from intermittent drinking to year-round drinking. It also altered the past patterns of seasonal celebrations, where visiting and fun had been <u>accompanied</u> by drinking and were not done for the <u>purpose</u> of drinking.

In the mid-1940's, many villages still did not tolerate their members to be drunk in public, even during major celebrations. Elders, chiefs, and councils still ran the communities with a good deal of authority. The hubs became populated and dominated by whites during the World War Two buildup of the transportation and communications systems. There has been a steady increase of military and non-military government employees since that time, until, in some hubs, government is now calculated to provide 90% of all direct and indirect

employment opportunity for new and old residents. Housing, school, and other construction brought in large numbers of jobs and outsiders who were not under village authority; younger people began to learn how to drink and ignore the elders. Wage employment, abil-ity to travel, and survival and economic independence and individuation led to the breakdown in the authority of the old over the young, in which alcohol use was more a consequence than a cause.

By the early 1960's, only the most remote communities were still relatively free of the most serious problems caused by these significant economic and population changes. The problems were created less by the history than the substance of the changes which included:

-- permanent settlement of seasonally migratory people

-- split families, with mothers and children in communities and husbands were away in pursuit of wild resources

-- seasonal, intermittent job opportunities and transfer payments underwriting male settlement in villages, creating economic dependency

-- loss of past economic activities (e.g., trapping, hunting, mushing)

-- lack of sufficient employment and employment preparation (e.g., new employment opportunities created by university, schools, fish and game, FAA, RCA, PHS, and utilities tend to hire outsiders; local and non-local schools do not prepare residents sufficiently for entry into the local job force)

-- increase in leisure time, filled in by idle use of television and alcohol

-- television and alcohol, as addictions, breaking into the transmission of information, problem-identification, problem-solving, sharing of concepts, language, traditions, values, philosophy, technology, history, crafts, and so on

-- increase in intergenerational conflict, the younger generation growing up with high expectations, but few opportunities or roles

The consumption of alcohol in the past by entire communities used to be intermittent, to occur around holidays and celebrations, such as religious festivities and birthdays. Commonly, relatives would make enough homebrew (often no more than 10 gallons) for the celebration; when this amount was consumed, celebrants did not go out looking for more. More recently, parties have become more prevalent and regular, with the negative results appearing in school truancy and declining student performance. In addition, when partiers ran out of alcohol, they found and a ready supply exists from local stores and/or bootleggers. They also began to drink in non-celebratory patterns -- individualized, isolated, all day, every day -- to, as many respondents noted, avoid dealing with their problems. In summary, what had changed was:

-- the supply and use of alcohol had become regular rather than intermittent

-- as transportation improved, wages increased, and relative costs declined, alcohol became more readily available through the year in each region, so that people could drink more of the time

-- the use of alcohol was reported by many as shifting from older adults to younger adults and to become both problematic and chronic as availability improved.

It was reported that when the adults attempt to ban sale and importation, their "model" or "objective" is the "dry" state common to village life when alcohol availability was so intermittent.

B. Village Alcohol Control Efforts

It is into this cultural and historical setting that the local option law, among other legal mechanisms, was introduced. It is a common belief that long-established behavioral patterns are not amenable to the intervention of law.

While this may or may not be the case, it is important to examine what is meant by "long-established."

The history of the penetration of alcohol as a substance and as a source or concomitant of behavioral problems suggests that, while alcohol has been perceived as a problem by villages from earliest times, the actual magnitude of the problem has risen dramatically and recently. Thus, the rise in the concern expressed by villages is less reflective of changed perceptions than of the rising rate of community losses and previous failed attempts to acquire control over alcohol.

A generation or so in the past, many communities had no "alcohol problem"; there were, to be sure, problem-drinkers and federal authorities were very concerned about bootlegging. But many communities were basically "dry" with local rules disallowing drinking. In the 1960's, as more money began to flow into villages, more alcohol flowed along with it. Villages found that they did not have the social control means to stem this flow with any great degree of success, nor the problems that emanated from this flow. In earlier times, villagers died of sickness, old age, and unavoidable accidents; more recently, younger people began to die, related in part to their use of alcohol. It is this change which appears to have prompted new law-making in villages, accompanied by increased law enforcement, cultural revitalization, and religious and social supports.

While most respondents note that individual, intermittent, and tragic alcohol problems have been around in villages for a long time, they suggest that alcohol as a village problem has arrived more recently and rapidly, coincident with the other rapid social and economic changes in the villages particularly in the period from the early 1950's to the late 1970's. One respondent from an Interior village suggested that the full dimension of the community alcohol problem "was so new that people didn't realize what was happening to them."

Conn (7, p. 68) notes that

> "although drinking was known to occur in Southwestern villages since the turn of the century..., the problem of alcohol traffic and consumption which village leaders confronted in their [early 1960's] discussions with state officials was of an entirely new dimension. It was as open-ended as the availability of liquor was open-ended. A social consensus, especially one that restricted universally individual rights to possess, use and share liquor, was hard to articulate and confirm through council action. State law agents provided no direct support for suppressing liquor use."

In the ensuing years, village leaders continued to search for social control mechanisms to stem the flow of alcohol. It is not difficult to understand why, in many villages, the problem of control seemed insoluble. Alcohol was only one of many forces eroding the traditional sources and modes of authority accompanying increased contact and basic economic change. While traditional sources and modes of power continued to be exercised over traditional problem areas (such as hunting and fishing), the magnitude, nature, and interactions of the new problems exceeded, at least for a time, the capacity of the village to deal with them effectively. This phenomenon is not unlike that experienced by rural communities anywhere during a "boom" period in their history. That period may not be permanent, but the problems experienced during it seem far beyond the capacity of local people to handle.

This suggests how powerful and destablizing a force alcohol can be when the conditions with which it is associated or under which it is used or its purposes or functions are changed. Its role in social transformation, under periods of great and rapid change, is greatly potentiated and is properly viewed as dangerous to cultural and community futures.

In a small number of communities, alcohol has been traditionally outlawed. These communities, marked by different forms of remoteness, limited immigration or outmigration, and strong leadership based on traditional rules and religious precepts, have had only intermittent bouts of difficulty with alcohol. Other

villages, even with long histories of contact, had had manageable or tolerable experiences until more recent times. There is some suggestion that either the character or the self-image of certain communities or cultures is "controlling" so that they view themselves as in control of their personal and/or community fates. These communities may view the local option law as a unnecessary, redundant, and useless tool to reduce access to alcohol. These communities have had a long tradition of controlling access through internal formal governance (i.e., law-making, enforcement, trial, and punishment) and informal means (i.e., each community member sharing some of the active responsibility for controlling access and use). Some of the means used by these communities are legitimated by community consensus but may be illegal in that they violate the constitutional rights of residents; lack of complaint about violations is due, in large measure, to shared cultural and community values, respect for traditional and community authority, and a desire to live within the protected confines of a conservative but healthy community, that is, a sanctuary or retreat.

The sources of the continuing tradition of enforced "dryness" appear limited in number:

-- geographic remoteness
-- late contact with the outside world
-- strong religious values from the origins of the community
-- consensus about 1) the authority of the elected or traditional government and the community itself, 2) legal and/or traditional local sovereignty, 3) the merits of a conservative range of tolerated behaviors, and 4) absolute restrictions and tough enforcement being the only means to maintain a healty lifestyle
-- remoteness from state-supplied law enforcement agencies
-- no tradition of extensive alcohol use, related problems, or tolerance of use
-- a tradition of local law-making, continuous law enforcement, and reified attachment to the substance of the law and the pre-eminence of the law
-- pride in having a good community reputation
-- having the major penalty for law-breaking be temporary exile from community
-- ability to control or maintain distance to nearby industrial development

-- ability to control the behaviors of new Native and non-Native residents
-- a healthy continuing subsistence resource base
-- maintenance of distant relationships with government programs, resulting in reduced contact, fewer negotiated compromises, and greater self-determination
-- family and cultural obligations which require extensive visiting and, thus, close uniform scrutiny of private lives as a form of social control and support.

While it is impossible to identify all of the roots of a "traditionally dry" community, these communities begin to acquire the reputation as being a "sanctuary" from alcohol and alcohol-related problems. It appears to be no accident that sanctuary communities maintain their basic consensus on alcohol prohibition:

-- those members who cannot tolerate such close restriction tend to emigrate or export their activities
-- those members who refuse to strictly abide by community rules are closely watched, counselled, penalized, exiled
-- those members who violate the rules but whose behavior is not found troublesome are watched closely but not unduly punished
-- persons who wish a retreat from more permissive communities are allowed to immigrate and settle in the village
-- there is continuous discussion of, voting on, and enforcement of local restrictions
-- there is continuous monitoring of the bad events in other communities.

The cultures of Alaska Native villages exist on a range of continua -- between traditional and western, between dry and wet, between controlled and uncontrolled, between community-focused and individual-focused, and between weak and strong; these are characteristics which villages often apply to themselves and to their neighboring villages as they evaluate themselves. These characteristics are important because, while no single community variable will predict whether a village will enact local option law legislation, villages which fall

at the most extreme ends of any continuum are least likely to hold a local option law election. For example:

-- the most traditional communities which continue to exercise effective local authority are unlikely to hold an election because 1) the local option law would be redundant, 2) it would increase the contact with white law enforcement; however, some relatively traditional communities have held successful elections in order to have the state law as a "back-up" to local authority in controlling the activities of "outsiders" (e.g., teachers, alcohol distributors, air carriers)

-- the most western villages are unlikely to hold elections because 1) they have adopted western attitudes toward drinking and control over individual drinking, 2) they have formal governmental powers to control retail activities, 3) they have an economic stake in local retailing, and 4) they have a smaller investment in maintenance of culture.

It is probable that, when we talk about traditional, dry, strong, controlled, community-focused villages, we are really talking about a single community character and that the same is true regarding western, wet, weak, uncontrolled, and individual-focused villages. It is also probable that most communities fall somewhere between these extremes and, thus, that many communities will have reason to examine the utility of the local option law.

In actuality, the use of the local option law appears to be most attractive to those communities which:

1) are predominantly Native in population
2) are not large regional hubs
3) are not on inter-community road systems
4) have not had continuous contact for a long period with (permanent and/or seasonal) outside populations or economic enterprises

5) do not have existing alcohol retailers

6) are in a period of controlled or directed transition

7) are assisted in this transition by regional or sub-regional political movements and/or institutions.

Conversely, the characteristics of villages which exercise neither formal nor informal controls are:

— extensive contact

— significant white populations

— direct road access to larger communities

— long history of no controls

— individual importation, rather than organized bootlegging

— no recent history of extensive internal social control

— improved access to larger communities.

It appears that the longer, more intense, and less intermittent the contact between the village and western life, the less likely the community is to entertain the local option law. Contact is considered to increase the likelihood of permanent white residents in the village, village acculturation to white occupations, industries, values, and drinking habits (characterized by some as "more mature", although it is difficult to translate this "maturity" into fewer behavioral problems).

For the purposes of this report, "contact" is considered to include:

— length of direct, indirect, regular, and intermittent exchange, visitation, immigration, and outmigration

— dependency on imported commodities (e.g., energy, food, tools, TV, money, etc.) and services (e.g., health, education, cargo transportation)

— availability of imported commodities (e.g., alcohol, cash, etc.)

— reliance on western institutional forms (e.g., corporations, city government, councils) to solve problems.

The more the local population consists of a mix of Native and white residents, the more likely the community will select individual rights over community rights and will not consider the local option law. However, demographic ratios are less determinative of being a more "white" or "Native" village than is the comparative economic power, political roles, values, and habits of these two resident populations.

Ease of transportation is an important factor in "contact." The greater the ease of transportation, particularly by private automobile, the less control communities feel they have over imported substances or the activities of residents. While transportation is easier now than ever because of aircraft, snowmachines, and powerful and affordable boat engines, inter-community roads which tie villages to hubs provide such ready access to alcohol that it is less likely and more difficult for road-connected villages to adopt a local option. However, some communities are on private stub-roads, not thoroughfares, and so can exercise somewhat greater control over importation. If bars and package stores are located on the road system outside of the village's limits (or other exempt lands within the boundaries), attempting to control sale and importation tends to result in exported drinking patterns and even increased accidents on the road system.

Availability of money and villagers' money management practices are important predictors of alcohol use. One remote village noted that money was so scarce that no one could afford to charter alcohol in, regardless of whether or not there was some form of prohibition. While cash unavailability is likely to result in increased production of homebrew, homebrew is most often made in small batches, quickly consumed, not in commercial size for sale and export. Since much economic activity in the Bush is seasonal, the availability of money, the management of that money, and the use of alcohol become problematic primarily on

a seasonal basis; seasonal problems are often seen to not require year-round solutions, such as the local option law.

As will be delineated later in this report, community actions are based, in large part, on the type, degree, and source of power available to and exercised by a village. A village which is not economically dominated by a single outside industry, which does not have resources actively being exploited by outside interests, and which contains a constellation of collaborative internal social control mechanisms both needs the local option law least and is most likely to consider it.

V. Alcohol Use Patterns and Regional Hubs

Recent years have seen a rapid and remarkable growth in the populations and functions of regional hubs, including the larger centers of Anchorage, Fairbanks, Juneau, and Ketchikan. Communities such as Barrow, Kotzebue, Nome, Bethel, Dillingham, Fort Yukon, Galena, McGrath, and smaller sub-regional transportation hubs have grown rapidly in importance. Many were, a few years earlier, larger Native villages developed around fishing, trapping, whaling, trading, and other forms of commerce. Now they are large towns, with significant white populations, city governments, and the entire array of services and agencies common to cities of far greater size. They serve as transportation hubs, seats of borough government, and corporate headquarters.

Due to their population size, demographic composition, economic activity, and other factors which distinguish hubs from villages, hubs are far more likely:

— to contain alcohol retailers

— to allow the sale of alcohol by the drink, the bottle, and the case

— to have more than one retailer

— to have large police units, detention and detoxification facilities

— to have attorneys, magistrates, judges, and troopers

— to have city ordinances and license restrictions governing the operations of retailers

-- to have public-safety policies on the management of intoxicated persons

— to have after-hours retailers.

As a consequence, many of the neighborhood, policing, transiency, traffic, and other reported problems and concerns common to cities also appear in hubs.

Alcohol is readily available in all of the hubs, <u>whether</u> or <u>not</u> they allow retail sales. Since hubs do not have laws prohibiting importation of alcohol, the transportation systems which comprise the basic function of these

communities also provide sufficient quantities of alcohol to meet the demand of not only hub residents, but of their surrounding villages. The systems of mail and phone order service and bootlegging combine to provide a diversified supply to meet the tastes of a wide range of consumers, a flexible supply responsive to great seasonal change in demand, and at a price that, while higher than some other communities, does not constitute a significant inhibitor to use. In addition, given the high quality of air transportation services, call-in orders for alcohol from the larger cities can be in the hubs within four hours.

The histories of these hub communities, while different from one another due to different events which marked their growth, are similar to those of surrounding villages from contact on. These communities, too, were marked by a high degree of social behavioral control based on the authority of elders, chiefs, and parents. Alcohol use was frowned on and local laws were strictly enforced, with occasional support from federal marshalls. Alcohol was seen to be a bad and painful substance, more appropriate for tanning hides than for human consumption. Quickly, however, alcohol, particularly homebrew, became more prominent and bootlegging appeared as a significant economic enterprise learned from whites. Homebrew led to a deterioration in village quality of life and, in some villages, its manufacture and use were banned. Its manufacture and use became more covert; villagers did not object to homebrew as long as no one was seen to be drunk in the village, women and children were not frightened, and homebrew was not shared, given, or sold to others. Violations of these conditions were often heavily fined by local authority.

From the 1940's on, the prevalence of homebrew and the controls of it declined due to increasing contact and retailing of imported alcohol. Large numbers of casualties to alcohol began to appear, in the form of deaths, accidents, physical and emotional disabilities, and crimes. New populations, new

jobs, new experiences, and expanded and legal retailing of alcohol resulted in an increased presence of alcohol in the hub and the surrounding villages as well as a further erosion of the local capacity to control alcohol. From time to time, as problems increased, some hubs have banned the sale of alcohol and closed the local retailer. This resulted in increases in organized bootlegging as the distribution system became more covert. The intermittent nature of voting wet, dry, wet, dry, while inhibiting a highly formalized bootlegging system, has created, nonetheless, a continuing local enterprise. The rate of negative social and health indicators generally show a positive correlation between voting dry and a declining rate of the problems. However, the combined product of bootlegging and mail orders continued to provide ample, if more intermittent supplies of alcohol.

Whether or not a hub allows retail sales of alcohol, all hubs experience a certain amount of bootlegging to serve the after-hours demand, the chronic alcoholics, and the "dry" villages. That is, as communities place tighter restrictions on legitimate retail operations, bootlegging grows to fill the newly-created gap between demand and supply. Bootlegging results in a somewhat higher per unit price for alcohol and diversifies the economic benefits to covert entrepreneurs.

Bootlegging has been a significant economic enterprise in Alaska hubs for some time. In one subregional hub, for example, it was reported that in the 1960's forty Native families were making a living from bootlegging and from the manufacture and sale of expensive homebrew. Their base of imported alcohol was provided by regular charter flights from the then-regional transportation hub. Bootlegging did not originate with these families but resulted from their perceptions of charter pilots being successful at bootlegging and taking over the distribution themselves. Opening a retail alcohol operation in the hub put most of these families out of business, although a few remained to provide after-

hours sales.

Bootlegging, as a mode of alcohol distribution, comes in a variety of forms. There is a casual sale -- a resident returning with a case of alcohol and selling a portion to defray his costs. Bootlegging to and in the villages seems to be, predominantly, of the casual type. There is semi-professional sale -- someone tied to a hub and one or more villages, supplying a narrow range of clientele. And there is sophisticated bootlegging -- a formal and regular expediting service, taking large orders and charging high fees.

Bootlegging within the hubs is more prominent than from the hubs to the villag-es. Hubs which prohibit sale but allow importation invite bootlegging as a more convenient distribution system than each resident ordering his/her own supply from the city. In these hubs, the consumers tend to be Natives, while the whites order their own supplies directly. Hubs which allow retail sale (either bars or package sales) often limit the conditions of sale (e.g., hours) or substances of sale (e.g., beer only) while the demand for ready and wide access remains. Bootleggers will either import their own supplies or will make legal purchases from the retailer and resell the alcohol after-hours. It does not seem to matter whether the legal retail shop is owned by the community or a private concern for this bootlegging to occur. This form of bootlegging seems to be tolerated by local police, as long as the behaviors which accompany it are no more troublesome than that accompanying legal sale.

There is some similarity in the history of alcohol sales in the hubs, even though there are many differences in their character. Hubs choose to allow retail sale, based on the arguments that 1) having legal sales would give the community more control over alcohol than could be achieved over bootleggers and 2) legal sales would generate revenues to the city government. The major counterargument is that it would be self-destructive to have a store. It appears

that all the arguments are substantially correct, that is, that communities do acquire legal controls, generate revenues, and suffer painful increases in alcohol use and alcohol-related problems.

The reputation of most Alaska hub communities commonly includes some colorful judgement about the amount of drinking and public drunkenness that is regularly witnessed and the sense of danger that people, particularly visitors, older persons, women and children feel as a result. It must be noted that, for some of these hubs, this reputation has grown rapidly along with the rapid growth of hub populations, services, and visitation. No more than 10-15 years ago, many of these hubs were indistinguishable in their behavioral patterns from those of other villages in their subregions. Residents would enforce the general unacceptability of drinking behaviors by approaching a person who was chronically drunk and say, "Take care of your kids and your family. If you want to drink, make a time and place for it, not every day. Make some priorities in your life." The resident conveying this message was seen as a representative of the entire community and the person with the problem understood that compliance was being required.

With the rapid growth of hubs came a decline in the ability to exercise power over residents, due to increasing anonymity, economic independence, ethnic mix, and increasing differentiation in values and respect; in addition, as transportation systems improved, alcohol became far more readily available. One hub mayor concluded,

> "Now people are complaining that we have a problem and we don't know how to deal with it. We don't know how to turn the clock back, to turn to our own culture for solutions, to keep from terminating ourselves through alcohol. So we turn to the outside to get community-oriented technical assistance and find out what our options are. But how do you take only the good from the other society?

A. The Introduction of Retail Sales in the Hubs

There are very few Bush communities which have licensed alcohol retailers. It was suggested that, as a consequence, there is often more money available than there is alcohol to purchase. If the demand is greater than the supply, consumers will travel to acquire alcohol and will support the unlicensed sale and transport of alcohol. Perhaps the difference between the licensed and unlicensed distribution systems is primarily in the certainty of supply; that is, a regular supply is more conducive to ready access, sharing, and consistent levels of use and misuse while an intermittent or less certain supply is more conducive to private use, hoarding, and intermittent periods of problem behavior.

Retailers in hubs have a regionwide effect by improving access to alcohol through regular supplies and shortened transportation times. Other villages argue that, while these retailers may make positive contribution to hub revenues, there is little ofsetting positive contribution made to the region. These villages see no improvement with the new retailing service; as one respondent noted, "Bootlegging was bad enough. Now we have the store and bootlegging, too." Other than the borough governments, there are no regionwide organizations to protest hub bootlegging on behalf of the villages. In addition, the size of hubs has grown so rapidly that hub populations constitute the majority population within the regions.

The placement of an alcohol retailer in an hub community does not signal the introduction of alcohol into the subregion served by the hub. In most instances, it merely means that the community serving as transportation hub has became more local; thus, the traffic pattern has changed more than the actual distribution system.

While a significant proportion of imported alcohol is provided to villages by direct mail order and charters from Anchorage and Fairbanks, the major regional source of alcohol appears to be the alcohol retailer located in the

hub; for this reason, the provision of retail alcohol sale in a hub will have an effect on the entire region, not merely the hub, as direct access to alcohol improves and relative cost declines. By reducing the transportation costs (through localizing the supply, through creating direct access by private vehicle) and regularizing the supply, alcohol has become more regularly and immediately available to villages surrounding the hub. The availability of alcohol as a substance is predicted on transportation/distribution systems and demand. Demand is limited only by the availability of cash compared to the price of alcohol. It is probable that the type of transportation/distribution system which supplies the demand is irrelevant to the consequent drinking patterns, as long as the legal retail system, the mail order/charter system, or the illegal bootleg system are reliable, timely, sufficient, and well-organized. Were hub communities to prohibit sale and importation of alcohol, it is likely that highly organized bootlegging would immediately move in to fill the continuing demand. While bootlegging is seldom a highly organized, high volume enterprise, its informality is not predictive of restricted access to alcohol or restricted individual use. Since all of these systems tend to operate on a "cash only" basis, the unavailability of money is a more critical factor.

Money availability lies at the core of changing alcohol use. In earlier years, homebrew was made for personal use and sharing with friends and relatives. Over time, homebrew began to be produced in larger volumes as the demand for alcohol increased, wages increased, and profits were able to be made. Profits led to various forms of bootlegging by aircraft, initially conducted by local residents, later by pilots. The prospect of profits eventually led to retail package stores and bars, regional supply systems, increasing convenience and access, increased volumes sold and consumed, decreased costs, and increased social and health problems, not only in hubs, but in the villages they served.

In the past, villagers without immediate and regular access to either the hub or to alcohol, came to hubs on an intermittent basis, to conduct their business, do some drinking and socializing, and return to relatively healthy home villages. Improved private vehicular access to hubs has led to increasing consumption in hubs and importing of substances and problems back to the villages.

Under high demand and volume conditions, it is understandable that hub communities would consider allowing a private or public alcohol retailer because such retailing would:

— allow legal transport, sale, and purchase
— control the local conditions of sale and consumption
— put an end to high volume, unregulated bootlegging
— bring purchase and consumption rates into the open
— retain more cash in the community for longer, via taxation or direct revenues
— underwrite public safety services to counteract alcohol-related problems through significant public revenues
— provide jobs in retail sales
— regularize the supply and range of alcoholic beverages
— reduce the price <u>per unit</u> for alcohol

The real experiences of hub communities acquiring alcohol retailers include an immediate growth in local government income (measured in tens or hundreds of thousands of dollars), continued high levels of local drinking, and altered forms of bootlegging (particularly after-hours sale). Since the hubs visited in this study were not seriously considering the local option law, the effects on the hubs of local stores were not carefully examined. For them, the issue of "store" versus "no store" was based on a range of concerns not examined in this study; there were strong feelings expressed that increased city revenues were a positive result, that city administrators had become overly attached to the con-

tinuation of these revenues, that white residents strongly supported this "normalization" of their access to alcohol, that increased policing had offset increased problems, and that the real issue was not access to alcohol but access to continuing wage employment, productive opportunities, and solutions to basic social problems. Respondents suggest that hubs allow the placement of a local alcohol retail outlet due to a chain of events not altogether under their control. They argue that the state has pushed villages to become second-class cities, in order to reduce the responsibility of the state for the direct provision of basic services, but has not provided, via revenue-sharing or other means, these cities with a sufficient income base to provide these services. The cities, then, turn to alcohol-based revenues to make up for the shortfall; the shortfall increases as per capita support from federal and state governments declines. As basic services (e.g., police, fire, sanitation) grow to meet the increased demand posed by increased population and higher expectations, the shortfall increases, thus increasing the reliance of the community of alcohol-based revenues. As one hub mayor noted, "The number of deaths here and in the surrounding villages has grown since the store opened. In our case, though, you have to damage the people in order to help them. It would have been a lot better if the government had just increased our revenue-sharing to reduce our need for the store."

B. Alcohol and Quality of Life in Hubs

The quality of life in hubs as seen by many residents is based on the quality of public services and facilities. To the degree that these services and facilities are significantly dependent on alcohol-based revenues, hubs become "addicted" to the continuing sale and consumption of alcohol. City employees tend to point out that hubs have no alternative income base to offset the potential loss of alcohol-based revenues, since the money expended on alco-

hol would not be diverted to other uses but would be sent directly out of the community to other communities which retail and transport alcohol. Thus, the community government is seen to be at least partially subsidized by its primary problem.

The placing of an alcohol retail outlet in a hub is likely to result in altered use patterns and/or related behaviors. For example, in communities marked by a formal or informal prohibition on the importation of alcohol, drinking tends to be covert and private. As in most white urban settings, public consumption, particularly drinking from a bottle in public, is frowned upon, even where it is not illegal. The new tolerance for alcohol that is suggested by a new retail outlet (particularly one that is owned by the community) is reported to lead to:

— drinking in public streets
— public drinking during the day
— increased drinking in proximity to the retail outlet
— social functions more marked by alcohol consumption
— decline in parties not requiring alcohol
— decline in retail prices for alcohol
— increased routine availability of alcohol
— increased visibility of leaders drinking before and after meetings
— increased visibility of non-drinkers
— increased divisions between resident drinkers and non-drinkers, resulting in increasing isolation and declining family and social supports
— increased visitation by residents to the retail area to find and socialize with others
— decline in the prevalence of evening visiting.

Hubs, like larger cities, are concerned with the reality of behavioral problems and the public appearance of their communities. They tend to restrict the operations of retailers to certain hours (e.g., evenings only, no sale on Sunday), during certain seasons (e.g., close enforcement during the busy summer season, during holidays and celebrations), and in certain areas (e.g., close enforcement in residents' living and shopping areas).

In communities where the local government owns and operates the alcohol retail shop, additional controls are occasionally attempted, to limit the behavioral problems without significant loss to profitability. In addition to limits on retail hours, they also attempt to control the amounts of alcohol sold (either to the community, an individual, or both).

Hub residents often perceive that their behavioral problems with alcohol are caused by "outside" people, particularly visitors from surrounding villages and some feel that they do not want to "foot the bill" for these visitors. In those hubs where the behavioral problems are identified as coming from outsiders (and even occuring outside), the alcohol control, prevention, and treatment measures became focused on the behavior of individuals rather than on the availability of the substance. The public safety aspects of <u>behavioral</u> control (e.g., policing, arrests, protective custody, involuntary commitment, transport for detoxification) became more prominent than <u>alcohol</u> control measures. The object of enforcement is to "keep a lid" on the problems, provide earlier intervention into dangerous situations, protect the intoxicated person, reduce the involvement of the judicial and corrections systems, reduce the amount of complaint by residents, reduce the paperwork for public safety officers, accomplish wholesale reductions in the numbers of public inebriates, increase the reporting by citizens by reducing the risk of serious penalty, reduce the severity of criminal actions, and not interfere with alcohol commerce.

This pattern of public responsibility has resulted in large numbers of

alcohol-related police and domestic violence calls. It does not appear to be the police priority that these numbers decline; the business of police is to manage these calls, reduce the injury to life and property associated with them, and reduce the severity of problems.

C. Villagers' Problem in Hubs

The regional hubs have served as a dumping ground for village problems for a number of years, due to the drawing power of hub activity and the tight controls and lack of privacy of villages. The local option law and other similar formal controls have made dumping not only easier but even required, for some.

If one of the purposes of alcohol use by villagers is to "let off steam", to release the pent-up feelings generated by village life, social and cultural change, and so on, the drinking by villagers in hubs exports the behavior and its related problems from the villages, where it is less controlled, to the hubs where it can be more controlled. It is somewhat paradoxical that visitors can engage in behaviors in the hubs that they cannot engage in at home and yet are more closely controlled by the hubs' formal systems. Other components which may account for this paradox include the desire by drinkers to engage in their extravagant activities away from the social pressure of their watchful village. There may be less social and psychological cost in dealing with the hubs' formal systems than the villages' informal systems.

Hub communities appear to act as nodes for some of the problems and problematic people of the villages for whom they provide services (e.g., transportation and distribution of goods, government and public services). The transportation systems bring people, problems, and substances to hubs and their associated villages. Villages often export their problem persons, problem drinkers, and problem behaviors to hubs for either the treatment services that are provided only (or mainly) in hubs and as more appropriate, tolerant, or

policed locations for certain behaviors. As a consequence, hub treatment agencies tend to receive problems rather than prevent problems.

There is some indication that the alcohol treatment, detoxification programs, and mental health programs domiciled in hub communities are not very effective in dealing with the problems of residents from "dry" villages partying in the hubs. Some treatment personnel aver that it is difficult to provide effective treatment when the presence of local alcohol retailers and tolerant behavioral standards conveys an opposite message to visitors. They also suggest that it is difficult to educate young people that alcohol is a problem, when alcohol is readily available and drinking, even to excess, is normative behavior.

D. Hubs as Regional Distributors

Many villages see their regional hub as the source of their major problems with alcohol. As they recount the history of their modern alcohol problems, they point to hub events (e.g., opening a retail outlet, voting "wet" or "dry") as the most significant factors. As Conn (7, p. 32) notes, "Village leaders had discovered that Bethel could set in motion a change in use of liquor in the villages and outside of Bethel by making it available." Similar actions in hubs could increase or decrease the rates of accidents, assaults, and so on. This was the result of:

1) villagers drinking in hubs
2) villagers purchasing alcohol in hubs and importing it to the village for personal and group consumption
3) villagers ordering alcohol for air delivery.

Villagers perceive that the hubs had created a regionwide problem, but did not underwrite regionwide or village solutions. As Conn notes (7, p. 47) "Bethel profited from the liquor store and could hire police from the revenues

it generated. The villages could not stop the liquor traffic, nor hire police from liquor revenues."

Liquor traffic could not be stopped because the villages did not have the legal power to do so, unless the carrier were violating state or federal laws. The villages in close geographic proximity could not stem the flow of individual importation on the road or riverine systems. While it is not uncommon for villages in such proximity to vote a ban on sale or importation, the ease of transportation tends to make this a rather hollow gesture as village residents either travel to the hub to drink or drink while traveling, thus increasing their danger of serious accident.

Villages often requested alteration in the retail sales in hubs, such as reducing the retail hours in order to reduce the commutation between village and hub, in order to discourage villagers from attempting to return home while drunk. However, the most popular request is that the hubs prohibit sale and importation.

E. Hubs and the Local Option Law

Were a hub community to successfully prohibit the sale and importation of alcohol, such an action would drastically alter alcohol availability in the region served by the hub. However, it is unlikely that any hub will vote to ban sale and importation. There are several important reasons why such a vote would be unlikely:

-- large numbers of white residents come from communities where alcohol is readily available and self-controlled use is common
-- many hub businesses cater to tourists and other visitors who expect the amenity of alcohol
-- a great deal of the alcohol use by residents is non-abusive and non-problematic
-- hub residents' alcohol use is marked by regularity of location, type of drinking, drinking partners, amounts, and so on, all consistent over time
-- white and Native hub residents alike will resist controls on moderate drinking

-- hubs feel they have invested enough in ordinances, police, and other public safety functions to manage the uncontrolled resident and/or transient problem drinkers
-- a significant proportion of public services and employment is sustained by alcohol sales and taxes
-- any loss of local retail capacity will result in referring these retail dollars to Fairbanks and Anchorage
-- much drinking in hubs is social, bar drinking, under the controlled hours, easily policed conditions, under the eye of sober employees who watch out for both the customers and the premises, where alcohol is available by the drink rather than the bottle or the case
-- if any controls ought to be placed, some hub residents feel, they are best placed on bottle shops which lead to bootlegging
-- hub residents feel that the transients cause most of the alcohol-related problems in the community
-- hub residents see no reason to limit access to alcohol by law or by increased taxes
-- elders, health care personnel, churchgoers, and other persons interested in stricter laws constitute a small proportion of the numbers and sentiments of the overall hub population
-- because hubs already have large police powers and police forces, the added support of state police authority would be redundant
-- in communities without existing retail sales, hub residents with an interest in local option law restrictions on sale and importation are fearful that their hub will use the local option law to expand existing use, creating additional access through Option One or Option Two.

One hub, for example, bans the sale of alcohol under its city ordinances. Some residents fear that a vote for Option One or Option Two would result in an increase in public inebriation and signal the symbolic defeat of alcohol treatment programs. It would also, they fear, split the community along racial lines, with whites voting for expanded access and Natives voting to retain the ban on sale. Even some of the white health care personnel appear to be split on the issue, asserting that controlled drinking is preferable to uncontrolled bootlegging.

Many of the deaths and most of the police contacts in hubs are alcohol-related. While many of the Native residents of hubs might, as do some of their small village counterparts, finally become intolerant of these losses, it was reported that some Native and most of the white residents would vigorously con-

test any community restriction on their access to alcohol, on the grounds that "our rights" are more significant than "their behaviors and losses." In effect, the quality of life in hubs is measured differently by resident subpopulations.

In summary, the ability of hubs to strictly control access to alcohol is attenuated by the demands of hub residents, the outlet function the hub provides for the villages of the region, and the financial commitment of the hub to alcohol commerce.

VI. The Sources of Village Controls

The central assumption of the local option law is that village control of community life and behaviors is the key to control over alcohol-related problems. Control over the availability of alcohol is intended to be provided through village local option law elections. Conn (7, p. 102) suggests that the political authority necessary to define and control drinking behavior is not new but was lost when the working relationship with outside law enforcement disappeared in the early 1960's. While the local option law appears to restore some form of this lost political authority, it does not, in fact, provide the flexibility to "define and control drinking behavior" but only establishes the conditions under which alcohol may enter community commerce.

A. Types of Formal Authority

It should not be assumed that the villages are totally lacking in the exercise of formal and informal controls. In fact, the source for the exercise of power in the villages varies widely across the state. Some villages derive a portion of their power from the traditional authority accorded them by their members. Others derive a portion of their power from their tribal status, that is, exercising powers available to them under particular relationships with the federal government. Some derive a portion of their powers from their land status as reservation or private land; for example, two Interior villages require a license to trespass on their commonly-held private land. One of the many conditions of that license is a ban on the importation of alcohol; they control alcohol importation as a matter of contract, rather than criminal law. And, finally, some derive a portion of their power from incorporation as cities under State law.

Incorporation as a city provides access to state funds and services and provides opportunities to exercise local control through ordinances. On the other

hand, it is often seen as a mechanism for the intrusion of the state into community affairs. Because it is based on the formal election of councils, its democratic form may be at odds with traditional legitimation of authority and allows access to authority to women, young people, and white and Native newcomers. In addition, city authority is limited by statute; both state and federal law pre-empt the ability of city governments to diminish the civil rights and due process by passing ordinances which contravene state and federal law. This is specifically the case in the control of alcohol and other substances.

Without careful examination, it would be incorrect to assume that local control results from or is equivalent to local city government, because:

-- the purposes of local government may be more reflective of services and revenue sharing objectives than of a desire to control the behaviors of individuals
-- local government is more often local administration rather than consensus over control of the community's future
-- local government often does not have the power to control some of the more significant aspects of community life, powers retained by federal, state, and borough authorities
-- local government cannot set aside the individual rights provisions of state and federal constitutions, no matter how significant the perceived public health and safety are viewed by the community members and no matter how unanimous the residents may be in passing stringent rules on behaviors
-- local governments are not always equipped to interpret or deal with the residents' perceptions of the problems and/or their solution
-- local governments may not be able to respond to crises in a creative fashion and simultaneously satisfy local demands and legal constraints (e.g., some local communities would have written far more extreme laws than the local option law to solve the problem)
-- the financial and other interests of local government may be at odds with the social welfare priorities of residents
-- local government may be unable to effectively deal with and resolve the opposing values inherent in the most difficult social issues
-- local government does not fulfill residents' sense of themselves as still "sovereign".

Some communities originally voted for incorporation in an attempt to gain

local control in the face of the negative aspects of Bureau of Indian Affairs administration. Some have even attempted to unincorporate when they perceived that the state was no more beneficent than the federal government and that incorporation could be used as an instrument to strengthen white control of the community.

IRA status provides communities for access to federal monies and powers, including Native courts, that would otherwise be unavailable. In particular, IRA status provides opportunities for communities to acquire direct local control over some important social programs. IRA status, which predates statehood for some communities, is perceived as a threat by many in state government who are opposed to separate relationships between Alaska villages and the federal government. IRA membership and councils are open to Natives only and the span of IRAs extends only to Natives; whites are neither represented nor controlled by IRA councils. As a single form of local government, unaccompanied by private land ownership or reservation status, it has little influence on non-Natives. Many IRAs are not intended by their members to exercise formal governmental or tribal power but only to provide access to federal programs. They remain as skeletal forms of autonomous local village government.

Traditional village councils are recognized as a form of local governance. They incorporate some of the leadership patterns which preceded contact as well as some of the forms of government introduced by teachers and missionaries. Their composition, operations, and span of control remain both limited and uncertain since they are based on the consensus (of the governed) through which they are legitimated and operate.

B. The Mix of Authority

The power of villages consists of a mingling of these sources of power and is exercised through a range of formal and informal systems and institutions.

Each community exhibits its own unique arrangement of these systems, based on the cultural, racial, economic, and governmental variables which comprise its history. The village arrangement is continually in a process of testing, reaffirmation, reconstruction, and change based on its perceived effectiveness in meeting community objectives.

Communities generally contain potentially competing forms of formal governance. It is not unusual for a community to be incorporated as a city government under state law and also to be established as an IRA (Indian Reorganization Act) council, in effect, a tribal government with certain political powers. Such a community may also have a traditional village, elders', or chiefs' council which exercises authority over other aspects of community life. Each of these forms provides its distinct strengths and weaknesses and areas of authority.

As the problems confronting a village change, the amount and location of authority desired for these various forms also change. As white populations or economic enterprises increase in number and prominence, there is often a greater push by these new residents for community incorporation in order to achieve formal representation and to become eligible for state-sponsored capital projects. This is often met by an opposite reaction from Native residents who desire greater investment of authority in exclusively Native bodies to retain Native control over vital community interests. Even among Native residents alone, there is often some conflict about which form provides the best solution to a particular problem.

Problems arise when communities find themselves vacillating among these systems, trying to develop a course of action among federal, state, and local powers which meets their objectives without subjecting them to consequent losses of power; that is, villages (and entire regions) constitute the smallest party in a three-party game with federal and state players. They increase their power by siding with either of the other two competing interests, issue by issue. They

seem to feel that total identification with state or federal power would result in total reliance and therefore total loss of local control. They operate to maximize their gains and minimize their dependence.

The result of this changing mixed-power arrangement is often uncertainty of responsibility, gaps in law and authority, and frustration over failed objectives. For example, a village voting under the state local option law cannot require federal enforcement assistance; a village turning to the IRA for enforcement of tribal prohibitions cannot require state assistance. Since federal and state authorities tend to think in terms of "exclusive jurisdictions", it is often community objectives and enforcement that fall into the gap. When this happens, communities often feel not only frustrated but powerless.

Power exists in a number of formal and informal relationships far more complex than the basic systems noted above. It exists, for example:

- within a community
- among communities
- among agencies (e.g., Department of Law, Department of Public Safety, Alcohol Beverage Control, regional non-profit corporations)
- between communities and agencies (e.g., Department of Community and Regional Affairs, Alcohol Beverage Control)
- between communities and their tribal, traditional, cultural, and religious authorities
- within land and resource owning or managing institutions (e.g., village corporations, regional corporations, government land managers)
- among overlapping and intersecting law-making authorities and bodies of law
- within a community or regional (e.g., borough) electorate
- within community sub-populations, clans, families, individuals, groups, councils, clubs, churches, enterprises
- within community and regional alliances and coalitions.

There does not appear to be a clear division between formal and informal forms of power. Formal systems, such as city council, IRA councils, and traditional councils of elders or chiefs tend to overlap with less formal systems such as the Spirit Committee (Northwest Alaska) and other forces. This mingling is due to the small size of villages, resulting in overlapping memberships, as

well as villages operating as large families with formal and informal forms of authority patterned in traditional ways.

There may be routine roles within governance for all age groups. Elders tend to operate through various traditional councils, while younger men and women tend to be more active on city and IRA councils, working through western forms to accomplish community objectives. In some communities, these western councils are seen as "staff" or instruments of elders' councils which remain distant from day-to-day operations. While there is considerable overlap among these entities, serious gaps often appear among these as well, with a tendency to shift authority for difficult, if not intractable problems, such as alcohol, away from one's own area of responsibility.

C. Sources of Power

There appears to be no single village political structure which is immediately predictive of a local option law election or its result. This is due to the great variety of power sources in any one village. To account for the power sources, one would have to identify the power relationships among

- elders
- city council
- village council
- IRA council
- administrative staff board
- corporation
- church
- school board
- health council
- alcohol council
- spirit committee
- local businesses
- families
- employers
- village public safety officers
- magistrates
- outsiders
  - teachers
  - troopers
  - judges
  - lawyers

— retailers
— air carriers
-- regional non-profits and their program personnel
-- state health and social service persons
— military
— guides and other entrepreneurs
-- industry.

These sources combine with other factors to determine how a community controls itself. These factors include:

— quality of leadership
— support of leadership
-- consent of community authority
— form of social control
-- quality of enforcement
-- support of enforcement
-- certitude of enforcement and punishment or correction
— remoteness or nearness of supports
— past history of local and non-local controls.

It is, of course, impossible to delineate the consequences of the interactions among these sources and factors. It is sufficient to note that there is authority within many communities that is not derived from nor dependent upon state or federal assistance or even acknowledgement.

What is more significant, however, than the number or form of community power sources is how they are integrated with one another. If they share an objective and are mutually supportive, they operate as a single power. Thus, if community powers are not divided on the issue of alcohol control, this is a far better predictor that the community will exercise control than the mere presence of a Village Public Safety Officer, a Village Alcohol Education Counselor, a village Alcohol Council, or a local option. These latter persons and actions are more likely to be the result of an emergent community control consensus than to be its source. Its source is more likely to be an increasing dissatisfaction with community quality of life and a shared feeling that the village can solve its own problem.

Some respondents voiced the hope that the local option process in villages would become expanded and permanent. Once a community becomes "dry", they

suggest, there is reason to think it will stay that way due to the confluence of positive changes; these include not only holding a local option law, but increased health education, education in general, alcohol education, alcohol counselors, health aides, VPSOs, growth of local government, development of shelters for women and children, large-scale and careful community programs, planning and planned change, and a "controlled entrance to the future."

It would be naive to assume that these internal control mechanisms operate in a vacuum, impervious to outside influences. Perhaps the most profound influence which can alter local community power is introduction of outside economic interests. Loss of control may occur when the village divides over insoluble conflicts between traditional village values of modernization and industrialization. Communities lose control over their local economies through major industrial developments, through new harvesters competing for local resources, or through new populations immigrating for economic gain. This is considerably less common when village residents retain ownership or other control of the resource and the extraction enterprise and are not merely employees in the enterprise. To the degree that village residents can control the rate or extraction or production, the geographic location of the resource extraction and the housing of newcomers, work conditions, local employment, rate of immigration, and prices and wages associated with new economic development, they will be less subject to loss of control; in effect, they exercise at least partial control over the transitions which lie at the heart of alcohol-related losses.

It is in this area of control that state or federal assistance (via stipulations) can be of more assistance than it is in law enforcement. That is, if alcohol misuse is a symptom of uncontrolled transitions, assistance in controlling the transitions may be of greater utility than treating the symptom.

D. Local versus Non-Local Sources of Power

Several respondents to this study saw the process of empowering the Native people by investing them in the use of their law-making power as the most beneficial by-product of the local option elections. Alcohol control was seen as the catalyst for increasing Natives' overall involvement with the Western electoral process.

The key to the people becoming invested in voting, however, rests on their perception of the success or failure of the option they enact. If they experience a significant, long-term reduction in alcohol-related problems, they may begin to view their vote as having the power to directly effect their quality of life. The failure of the local option, on the other hand, to reduce alcohol-related problems for any significant period of time will have the effect of further alienating people from the voting process.

In addition, failures in the enforcement of the local option are likely to lead to extralegal local control efforts to solve the alcohol problem; as a result, residents will perceive their participation in state-sponsored local law-making as ineffective, particularly by comparison with their own, more flexible solutions.

These potential outcomes are more likely to increase the attachment of village residents to local power systems than to state-provided systems. Power does not flow from its authorized distribution from the state, but from its successful exercise; that is, as long as local power is exercised and not successfully challenged by the state, the courts, the residents, or outsiders, it is as real as any derived or designated power. Such power may be exercised by the most traditionally non-democratic as well as the most consensually-governed and democratic systems.

The source for the exercise of many local powers is often uncertain. Claims are variously based on references to tribal authority, elders' authority,

chiefs' authority, reservation status, private land ownership, trespass control, sovereignty, and the formal consent of the governed. Some communities which were reservations in the past continue to be reservations or claim undiminished reservation status have the experience of controlling alcohol using reservation powers. In the late 1930's, for example, the exclusively Native population and government of one reservation, using their own initiative and local police powers, successfully prohibited alcohol. According to one observer, "With the passing of the use of liquor the entire tone of the village has changed incredibly. Morally, physically, mentally, and spiritually, these people revived." Reservation status allows one community to continue to operate under its own reservation constitution and by-laws, with its own governing council, ordinance-making power, magistrate, penalties, and so on. Because its claimed reservation status is not recognized by state or federal governments, another tribal group exercises control over the importation of alcohol by requiring a private property trespass license, one of the conditions of which prohibits alcohol.

Communities which claim sovereign, reservation, or tribal powers are unlikely to hold an election under the local option law since that would both recognize and increase the authority or presence of state government. Those communities with clear ties to federal authority will call upon the Bureau of Indian Affairs, the Federal Bureau of Investigation, and federal marshals to report, investigate, and enforce violations of criminal law. Communities without such ties must continue to rely on state enforcement of state criminal law. Some communities are simultaneously comparing the local option law with some expansion or explication of tribal law, using state law enforcement only as a backstop for more serious criminal investigations.

Communities which feel that they have maintained sovereign powers to control their internal affairs and their relationships with the outside world tend to

expend more energy than other communities in the construction and enforcement of local laws. That is, since they do not derive their authority from larger governments or bodies of law, nor do they feel they can depend on outside law enforcement supports, they must exercise their authority continuously; it is likely that continuous exercise of authority makes it easier to continue. Characteristics of continuous law-making and enforcement in these communities include some of the following:

- signed commitment by each community member to support community laws and the actions of council members
- commitment by each community member to physically and psychologically support the law enforcement effort
- annual review, reconsideration, amendment, specification, rejection, and re-enactment of law by the entire community
- creation and maintenance of local law on a wide range of daily life matters, such as loose dogs, curfews, speed limits, truancy, drug use, drunken behavior, theft, threatening behavior, family neglect, gambling, fish and game salvage, and others
- no assignment of enforcement to specific individuals, so that responsibility rests with each and every community member
- enforcement by large numbers of persons (men, women, children, elders, council members) at the same time and place, creating mutual pride and support and de-individualizing the burden
- formal investigation, trial, and punishment methods
- no record kept of violators except in community memory, so that there is no long-term permanent impact on the future of individuals
- formal methods of exile with hoped-for and encouraged returns and re-integrations
- semi-permanent exile of consistent violators, particularly violent persons and substance distributors
- increased, rather than decreased, enforcement of alcohol restrictions during major celebrations
- extensive monitoring of luggage and freight at point of entry into community
- immediate destruction of prohibited substances at point of entry, as the basic fine for attempted importation (rather than later trial) and as the basic social embarrassment
- more intensive enforcement of repeated violators' activities within and without the village (through villagers or relatives reporting systems in other, particularly hub, communities)
- convicting violators on the grounds of possession and use or using possession and use as <u>prima facie</u> evidence

of illegal importation
-- exercising controls over visitors as well as residents
-- illegal search, seizure, and destruction of alcohol from private homes based on observed and reported possession and use
-- unaltered policy of prohibition, but methods and penalties of enforcement renewed or otherwise modified to meet new needs; for example, penalties may be stiffened by reducing the amount of basic physical support provided by peers
-- non-reliance on outside enforcement entities or procedures, since these commonly result in after-the-fact actions; the village desires and achieves immediate behavior intervention and modification.

The local option law is only one mechanism of many which encourage more self-control. Such self-control, as the end result of some decentralization of government, is not assured merely because central planners desire it. Self-control requires more resources than the simple desire to have or shift power; it requires individual and group talent and energy, the consensual and active support of the community, and less restricted fiscal and other supports than are commonly available.

Self-control is not, however, a new phenomenon in rural Alaska; however, past government policies and practices, the introduction of western law, and the lack of education of rural residents in the modes of self-governance available under western law have eroded the confidence that villages have in their own integrity and control. Laws and supports like the local option law and the VPSO program result, in large measure, from the past failures of central government to resolve the problems to which it has, in part, contributed. It is, perhaps, not required that central government formally transfer power to communities, but that these communities, by exercising these powers, regain a sense of their own autonomy and strength. This "sense of community" is likely to be more predictive of positive village outcomes than would be more formal gesture of power transfer, since central government's final authority to alter power arrangements makes all gestures appear temporary at best. Since the state reserves the ability to alter law, definitions, interpretations, limitations, and classifica-

tions, the local option law cannot be considered wither fixed in its meaning or even a permanent feature of state statute.

VII. Village Control and State Control

Many villages see that their ability to control the availability of alcohol has rapidly declined since the repeal of legal prohibitions on Native access to alcohol, the end of federal territorial jurisdiction and enforcement, and the replacement of the federal law enforcement and judicial system with the state system. It is apparent that some villages turn to the local option law to enable them to control the behaviors of individuals that are not controllable by other local ordinances, authorities, and social control mechanisms. The statute appears to provide the required tools for local (primarily Native) residents to control those persons who do not feel bound by local rules adopted under the authority of city councils, traditional councils, councils of elders or chiefs, or IRA councils within which they feel they or their interests are not represented.

Those who tend to deny the authority of local councils include young people, white residents, teachers, visitors, retailers, carriers, and adjacent military and industry personnel. These persons, most likely to challenge local authority, are also the most likely to challenge the authority of the law and the procedures which implement it. The local option law is also likely to be <u>least</u> effective with residents who had challenged local authority and <u>most</u> effective with outsiders and nonchallenging residents.

Other than increasing the legal burden of commercial carriers and alcohol distributors, the power of the local option law does not extend beyond the near boundaries of the village; it does not extend to include other communities, non-local retailers, or federal enclaves (such as military and aviation facilities). Thus, it is a relatively limited power.

The implications of the local option law as a form of local empowerment are quite complex. It is unclear whether use of the local option law increases or decreases the internal authority of the community. Has the local option law

returned past powers to villages to control this important aspect of their lives or has it contributed to the continued removal of such power and increased villages' dependence on and acculturation to larger, non-local legal systems? What are the costs and benefits of the consideration, election, and implementation of utilizing this power?

For example, the passage of the local option law removed the power of the incorporated villages to enact emergency ordinances providing the same purposes as served by a local option. In effect, it removed this immediate and flexible tool of a council and replaced with a less immediate, more powerful and inflexible tool available to voters. By engaging the law enforcement and judicial powers of the state, there was a potential for a new coalition between village and state justice systems in pursuit of a common interest.

It has been suggested that the substance of the local option law is less significant than its form and the processes through which villages meet their objectives through it. Some observers sense that the local option law is one "hook to control the kind of change in your community, a lever, a throttle, not on change, but on the response to unavoidable change." To the degree that both incorporated and unincorporated villages are granted formal powers by the State, this arrangement is of great interest to many who are looking at the local option law in terms of the appropriateness of its form and processes.

One perspective on the appropriateness of the local option law suggests that the law is demeaning to rural villages. The essence of this perspective is that these villages cannot control themselves and that the non-local government must help villages to control themselves. In this perspective, the law is construed to mean "we will let you help yourselves by your voting to have us come in and help you." In this perspective, the villages become the agents of state authority within the village pursuing state objectives. In effect, the powers

continue to flow from the top (the state) to the bottom (the village electorate). The village electorate can only accept or reject one of the four options; they cannot otherwise alter the terms of the authority open to them.

One unresolved question is whether the authority to exercise power has shifted from the village to the state or vice versa. Where power resides is often called the locus-of-control. Shifting the locus-of-control in either direction seems to result in increased culture contact. When the locus shifts to the state, the villages must abide by procedures designed by the state and increase their reliance on state agencies and personnel. When the locus shifts to the village, the presence of western influence in the village increases (e.g., police powers, elections). "Bringing the state into the village" may change some of the basic conditions and processes which comprise village life, such as internal power arrangements, family obligations, control over the lives of other individuals, and so on, all at potential odds to vital cultural givens.

By taking the power offered in the local option law, villages must take all of the constraints and risks that come with it -- elections, reporting, trooper involvement, arrests, testimony, evidence, convictions, jail, parole, probation. It is possible that the "medium becomes the message;" that is, that villages learn that the only power that they have derives from and is completely dependent on state law, policy, and agency personnel.

Since the law is intended by many villages to be used as a "backstop" to village power and authority, it is possible that they also intend to tap into the power of the state on an intermittent basis. This is akin to tapping into electricity; the consumer has control over the power switch, but the real power resides elsewhere.

Some villages see the local option as returning power to them without requiring any additional contact with or reliance on the state troopers. They see the threat of calling in the trooper as consolidating the internal authority

and rules of the village. They attempt to control residents' behaviors by small penalties meted out by the council convened as a community civil court; it is only when community efforts have been exhausted that the villagers intend to call the troopers.

The local option law appears to promise more state involvement in the enforcement of locally-elected options without, in fact, ensuring it; as a consequence, villages may be trading other legal and extra-legal methods for controlling alcohol and for the potential of increased external assistance.

If there is not an intended power shift, is there an unintended shift; that is, do villages take by exercising it, even though the power is intended to be retained by the State? Some observers feel that the local option law was designed explicitly to help the villages "turn the corner" in achieving a greater degree of local self-determination. By learning the use of law-making, the power of the vote, and the use of law enforcement, these observers feel that the villages will achieve profound "downstream" social products such as greater education into and use of government power and community organization.

In many communities, there is little tradition of the electoral process in the passage of laws; more commonly, an elected council or a council of elders passes rules without requiring the formal assent of the governed. In many communities, councils would not pass such ordinances without first ascertaining through a variety of means that there was community consensus on the rule. This has ensured some continuity in traditional decision-making processes. In these communities, a local option law election may be seen as a threat to traditional decision-making authority, by removing the basis for the exercise of that authority from the council and by establishing decisions on majority vote rather than on consensus.

These changes may or may not be significant. For example, the electoral

process has been replacing or supplementing traditional processes for some time, due to the rise of elected councils and corporate boards. In addition, where the traditional council's authority has been eroded by successful challenge by some residents, elections provide a means to support community decisions both formally and anonymously; elections may also constitute simply a re-affirmation of council actions.

Some respondents hoped that the local option law would return powers to the community removed over the past thirty years. They hoped that the new law would be as effective as their old laws. Yet many perceive the law to be an effective obstacle to community objectives.

These residents suggest that the state law diminished and makes invalid some of their own local ordinances and processes. The process of considering the local option law also highlights the extra-legality and illegality of some of some of their own effective controls.

The issue of highlighting extralegal activity dates from statehood where, as Conn (7, p. 9) notes,

> "Village leaders were confronted with two problems. First, the backing of state law was not evident in dealing with the major liquor problem of the period and, second, they, as law enforcers, were warned by police authorities that their acts in protection of community interests might make them subject to law suit or arrest. Village leaders had too little experience with courts to evaluate these warnings of legal actions which might be brought against them.

The decline in legal prohibitions since the early 1950's, as acts of government, have elevated the freedom of the individual to drink and to be drunk at the evident cost of the community's freedom from fear and loss. This suggests that the local option law, while utilized immediately and gratefully by villages, contains a competition of values which is creating serious difficulty for some, requiring extensive extra-legal manipulation to make the law work for them. Western values and law emphasize individual rights and pursuits, with the

common good being limited by the inalienable rights of the individual. The conflict between these two value systems is embodied in the limitations and enforcement of the local option law. The community purpose in passing a local option is to control or prohibit the sale and importation of alcohol; more directly, communities wish to ban the possession or use of alcohol. The communities wish to ban alcohol not to limit the freedom of individuals but to protect the individuals and the community from the dangers posed by alcohol. The community welfare takes precedence, in these life-threatening conditions, over individual rights and desires.

Communities that wish to ban the presence of alcohol are confronted with federal law which protects the private production and use of alcohol. This is viewed as a paradox because, for many years, the making and possession of homebrew was banned by federal law. "We want no liquor here," residents say, "but you say anyone can make it here and we can do nothing." Communities ban the importation and sale of alcohol with state support but fail to understand "why the state would allow people to possess alcohol in their homes but they won't let them bring it from the airplane to their home." They are confused by the paradox that, once a person has successfully eluded the effective ban on alcohol importation, he is rewarded with the freedom to use and share the substance in the community without penalty or control.

Communities also do not understand 1) why they are denied the tools necessary to enforce the ban on importation such as universal body searches on arrival, universal luggage search, X-ray of all cargo, and other methods which constitute unwarranted search and seizure, 2) how it is that state officials can search and seize illegally-taken wildlife used for food but that village officials cannot search and seize alcohol resulting in death, and 3) why neither state law nor tribal law can limit the civil rights of whites or Natives. They express more interest in devising pragmatic solutions to real-life problems than

supporting abtract principles. One observer suggested that this is the result of learning western law from troopers who are similarly invested in "getting the job done."

While there is great cultural and social variability among Native cultures within Alaska, there is, generally speaking, great reluctance by community members to actively and forcibly interfere in the behaviors of others. Interference usually takes the form of invading privacy by open visiting, shaming, ridiculing, counseling by elders, and so on. However, drinking in communities is seen as predictive of, even equivalent to, violence between and death of members. Communities see that, no matter what methods are used to curtail alcohol, lives are saved and therefore the methods are justified. This "means-end" argument runs counter to constitutional protections of individual rights, where the individual has the right to drink and then to be punished <u>if</u> and <u>after</u> his behavior has violated the law. As one villager noted, "We don't have a legal mind. Things are not legal or illegal. It is right or wrong." This disparity in approaches extends to liquor retailing as well. Conn (7, p. 34) points out that

> "The logic of traditional village council activity and control would have suggested that a liquor store responsible for setting in motion conduct that resulted in accidents and death should be closed. The logic of the state legal control was that problems on the part of those who drank and misbehaved should be dealt with only <u>after</u> misconduct had occurred. Neither the state nor the <u>rural</u> population had the capacity to act on its logic.

Some have suggested that it is important for Native village residents to become better educated into western law and its utility in order to achieve their objectives. In the Voting Rights Act submission on behalf of the local option law, the authors wrote "The alcohol local option election process helps rural Alaskans to become 'vested' in the system, to comprehend a few of the intricacies of law enforcement and, most importantly, to feel some measure of

control over their own lives within 'the system'."

The local option law, while empowering villages to control aspects of their own lives, still remains a western law. It was not designed or written by rural people and its purpose, intent, powers, procedures, language, limitations, and relationships to other parts of western law and law enforcement remain quite unclear to many rural people. Villagers also see that other, vaguely understood aspects of western law formally prohibit villages from taking actions which would solve the very problems for which they are turning to the local option law. In order for them to fully utilize the local option law, they may wittingly or unwittingly violate other laws.

In effect, villages using the local option law are not writing their own law, consistent with the underlying elements that make aggregations of individuals and families into "communities." The writing of law comes from receiving or assuming generalized powers, then convening to draft, adopt, implement, and revise one's own laws to deal directly with self-perceived problems. The use of the local option law is less an exercise in the writing of law than of trying to solve one of their most difficult problems through a complex election which adopts a pre-formulated option. In the case of villages with alcohol problems, only four options were available, perhaps none of which could be expected to deal directly and effectively with their problem. In any event, whether a system of law is received from elsewhere or generated internally, it is likely to fail without the fully aware consensus of support systems, sufficient time to set realistic objectives, a humane rate of policy and legal development, and the ability to modify and change solutions as necessary.

Thus, an alternative view is that goal-directed power comes from within the local community, not from state law, Indian law, or other powers provided by external, non-local authorities or systems. Education into the powers available

under state and federal law appears less to expand the options perceived as available to Natives than to narrow the options they would like to use or are using to manage their problems. Conn (8, p. 39) points out that "there has been far less enthusiasm for mounting a system of law based on cultural pluralism than in other colonial situations. It is not in the American tradition, we have been led to believe, to allow separate justice systems in a single state to coexist."

There is little evidence that communities are "investing" themselves in the larger, external systems. They appear to be manipulating the western systems, at times, to meet local needs through maintenance of local powers; because "social control is not ultimate control in modern village Alaska" (8, p. 41) communities rely on the threat of external force, the enhanced local control authority, and the flexibility afforded by their remoteness and the consent of the governed.

Villages appear to be more capable of subtle differentiations and solutions in social control than does state law. For example, some villages differentiate among the types and consequences of importation. They assign different weights to chartering planes for importation, bringing smaller amounts in personal luggage, and being intoxicated while traveling. They view importation of alcohol as more serious than personal use, since importation potentially involves more users. They also view persons who receive alcohol to be less culpable than importers and internal distributors, since the intent to violate the law is much clearer on the part of importers and distributors. Some view the ban on alcohol importation as a right reserved by the village, with sanctioned exceptions during festivals and celebrations.

Some villages are quite intent on retaining the flexibility inherent in internal power. They have more knowledge of the offense and the offender and more surety of conviction and penalty than is provided by external systems which

are limited by:

— statutory design
— statutory exclusion
— other constitutional limitations
— the organization of external police powers
— evidentiary and other requirements
— non-local judiciary.

The local option law may be, for some villages, a weak approximation of local forms of power; it is less complete a solution, less personal in application, and less certain in its application than is the exercise of internal power. It does not necessarily 1) involve the community as a community, 2) involve the other parties to the violation, nor 3) weigh the penalty against the life situation or the intent of the offender.

In some communities, internal control is based upon the consolidation of legitimate forms of authority — traditional council, elders, city council, IRA, village corporation, and so on. This consolidation provides a single form of continuing internal self-governance. Some villages see the local option law as an avenue to dissipate this community power. Power is seen to be dissipated when 1) the electoral process replaces council authority, 2) reliance is shifted to outside agencies, 3) the state provides and legitimates only certain methods and disallows others, while the villages continue to utilize methods deemed appropriate and legitimate to and by the village residents, and 4) formal systems remove the ability for local residents to negotiate solutions to problems. This is an opposite principle to that suggested by the local option law, that the power residing in the state is somehow shared with or shifted to the community.

VIII. The Exercise of Formal Village Controls

The local option law cannot be examined as if it were operating in a social vacuum. The law is used by real communities, with long histories of formal and informal social controls. The purpose of this chapter is to introduce the reader to these social controls with which the local option law may be well or poorly matched.

Given the great variety of Alaska Native villages, there is no simple measure which would predict their local ability to manage local problems. Geographic proximity is often expected to predict the actions of clusters of villages, based on similarity of culture, kinship ties, and history. However, coastal villages often tend to be as dissimilar from one another as they are from riverine villages or road-connected villages.

Community differences are not able to be reduced merely to the variety of procedures they use to accomplish their objectives, but to the fact that the exercise of law enforcement and punishment is specific to each individual resident, based on who he/she is within the community, the family, and so on. In these communities, justice is in no way blind to person or situation.

The ability to effectively control alcohol can be limited by many factors suggested in earlier chapters. However, it appears that the ingredients necessary to control alcohol-related problems include:

-- clear identification of the source of the problem

-- community consensus on the problem

-- council support of control and enforcement

-- means to control the source or supply of alcohol

-- active community and agency involvement in control activities

-- continuity of control over long periods of time

-- certitude of enforcement and penalty

-- integration of the forces of decision-making and control.

All of these factors are critical to successful accomplishment of community management of the problem as they define it. As noted earlier, perhaps the most difficult to accomplish for some communities is the last item -- integration of the forces of decision-making and control. This includes not only formal entities but the informal power arrangements among families, women's groups, fraternal organizations, dog-mushing associations, charismatic individuals, and economic forces, such as the store-owner, air carrier, subsistence association (such as whaling captains and walrus hunters), fish and game advisory committees, and so on.

While in some communities the membership of traditional and city councils is overlapping, this does not mean that the two councils operate as a single decision-making force. Indeed, they are often at odds with each other over powers, objectives, methods, and limitations of authority and powers. Elders, for example, may have control over various traditional activities, such as celebrations and subsistence hunting; they also may be the final source for very long-term decisions about the future of the village. They may not be engaged in the more active, day-to-day management of village affairs. More critically, when confronted with new problem commodities (such as television, alcohol, snowmachines), elders may have neither the span of control nor effective methods to control these novelties.

The traditional council is an institution which often has great pressures placed on it, without offsetting increases in resources to deal with these pressures. In response to the problem of alcohol, for example, these councils may pass rules and yet lack any method of enforcement. As the repository of village desires for effective social controls, they are often criticized for their inability to enforce their rules.

City councils are formed to provide municipal services, such as water,

sewer, power generation, roads, and other utilities. As a consequence of revenue-sharing, they have the financial backing and paid staff which IRA councils and traditional councils generally lack. City councils begin to acquire the role of the traditional council and/or the IRA council in the protection and enhancement of culture. The city councils pass enforceable ordinances and direct the priorities and tasks of the VPSO.

Because city councils are elected bodies, their composition is quite significant. The more broadly-based their membership and political support, the more likely that they will represent a variety of areas of concern; for example, having more women on the council may be predictive of stronger actions to protect women, children, and old people. On the other hand, if a community elects a council based more on family ties or other factors, there is less likelihood of concerted community management. For example, one village voted for Option Four under the local option law and then proceeded to elect a council with particular weakness for alcohol. This suggests that the option selected was more symbolic than real, because the new council was unlikely to direct strict enforcement.

The growth of community government infrastructure, on the whole, tends to increase the span of community control by shifting power from individuals to coalitions which results in more anonymous decisionmaking and more consensual support of decisions and actions. As the numbers of organizations proliferate, some communities find it necessary to integrate them more closely in order to solve problems as a collectivity. That is, in these communities, the institutions must all line up in the performance of their particular tasks in order for problem management to occur.

In some communities, the village council or the city council alone appear to be held totally responsible for the control of certain problems, such as alcohol. This consolidation of authority within a few hands places a great burden

on incumbents but relies on a long established pattern of traditional controls.

By "traditional", we do not mean that the council form of government is embedded in the culture of Native people; indeed, it was far more common for the power to govern to reside in a clan chief, elders, or heads of prominent families or economic enterprises. This was due, in part, to the seasonally "nomadic" subsistence existence of Native families and bands; that is, it was primarily with the coming of white men, missionaries, and schools, that seasonally-occupied traditional hunting, fishing, and trading sites became permanent settlements known as villages. These permanent settlements were encouraged to create councils for the purpose of conflict resolution, adherence to school demands, and alcohol control (8, p. 11). These "traditional" councils, in some cases, later became tribal councils, IRA councils, and, following statehood, city councils.

These "traditional" councils relied for their authority on the consent of the governed. More modern councils began to exercise new powers, often at variance with traditional modes of social control. Over time, the federal and state governments and law enforce-ment authorities have attempted to invest these councils with additional legal powers.

> "In short, cuoncils had been transformed into an agent of state legal poser in a realm where village consensus had not been firmly established. The mantle of state authority was also suspect because it was measured, ultimately, by trooper activity." (7, p. 48)

Due to the lack of effective western presence in these villages,

> "The legal system of the state had very little to offer village residents by means of support or prevention [e.g., troopers, judges, prosecutors, public defenders, police, magistrates, jails]...the most active legal force in the villages were councils. These councils, however, had not been active traditionally as police mechanisms to fine and jail. Instead, they had acted to confirm pre-established village consensus." (7, p. 32)

A. Council Enforcement and Adjudication

Local communities, whether they are organized under traditional councils or city councils, pass rules governing the behaviors of their residents, including alcohol use. In those communities which do not have assigned enforcement personnel, the authority for the enforcement of local rules resides in the consent of the governed. As a practical matter, in many communities, the councils sit not only as administrative and legislative bodies, but as judicial bodies as well, trying citizens for violations of local rules and meting out penalties. Any challenge to their authority by an accused can be met only with informal means since formal linkages to external authority are generally absent or attenuated.

It is important, at this point, to understand better the history of the role of councils, in order to reveal the roots for some of their perceived failures in achieving certain goals, as established and measured by village and non-local observers. For this history, we turn gratefully to Conn (8, p. 12-18):

> In the Eskimo communities, representatives of leading families formed a consensus within councils. Village councils fit within the process of community and state law. Councils back-stopped and extended dispute adjustment. This reflected the classic approaches of conflict avoidance - conciliation, gossip, ostracism and counseling among Eskimos. But, as important, they were supported from the outset by white village residents (teachers-missionaries deputized under federal law), the board of elders in Presbyterian and Moravian communities, occasional resident U.S. Commissioners and nonresident marshalls, Coast Guard cutters and even a distant court system.
>
> Councils were the last stop in a process of evolving inter-personal customary law ways and the first step in a process of Western intervention that could result in referral to a police and court process outside of the village. Councils settled into a routine of dealing selectively with persons whose social ties to the village made them somewhat less responsive to approaches that were geared chiefly to drawing an offender back into a social consensus. These ties were based both upon the need to retain and to sustain economic relationships upon which survival depended. Confessing or compromising before a council also avoided removal by the Western law process.

Councils were draped in official and ex-official legal authority. In territorial days (pre-1959) this allowed them to operate as police courts where a U.S. Commissioner was not present. The status of many under federal Indian law gave them power (according to visiting Bureau of Indian Affairs officials) to govern members of the Indian community... Suppression of alcohol use among villagers became their special legal task.

Intervention by marshall, Indian police, liquor suppression agents and later territorial police, while limited by geography and state resources, was sufficient in territorial days to reinforce the council when it responded punitively. More important, however, it shifted its focus to deal with matters before a situation exploded into violent or actual conflict...By reacting to incipient conflict or to the seeds of later conflict, councils avoided confrontation with either villagers or with agents of the official legal system.

A variety of factors destabilized the council as a mechanism for dispute adjustment in the years immediately following statehood. In meetings with state officials, council presidents learned that state officials would not support bans on liquor possession or manufacture...

Villages were informed that they were to handle matters on their own and notify the police only when violent felonies had occurred. Letters to police during the period demonstrate that detailed descriptions of repeated violence were often left unanswered. Second, in the early 1970's drunken behavior in public or in private was decriminalized.

In the late 1960's, the court system introduced appointed Native justices of the peace (called magistrates) into about 30 Native villages. Where this occurred, village councils deferred to this official authority and refused further complaints. Yet because matters heard by councils were often pre-or sublegal in Western terms because complainants did not wish to confront fellow villagers, and because village policing was unstable, transfer of authority did not induce a transfer of the activity which councils were best equipped to carry out. Most villages did not receive magistrates, and could not appoint them without court approval.

Councils as institutions have continued to play a central role in dispute processing in more than 100 villages without magistrates. Yet to continue that activity councils were forced to become less "council-like," by earlier definitions, and more court-like by magistrate terms.

Councils confronted a more persistent stream of conflicts of a magnitude and severity unlike the immediate past.

With external punitive intervention less reliable, many councils shifted from bodies of reconciliation to bodies which directed fines and other sanctions at offenders. This shift from council-like to court-like approach was never completely successful. Fines were not collectible. Official support for fining was verbal but never explicit. Young persons challenged council authority.

In the early 1970's troopers began to train village police. In conjunction with the councils, council marshalls had existed as extensions of the council in many places. These new village police, hired and paid by the council, were trained as Western police and charged with reporting felonies to the state troopers and lesser matters to councils. Some reported other matters to the local authority. Others ignored the council.

Still reports from police indicated that by the mid 1970's eighty percent of their arrests resulted in council and not court disposition. In a 1977 survey of 55 villages a quarter of all matters processes as criminal law violations resulted in council or problem board disposition. In other words, village police appended themselves to councils, as adjudicative bodies for minor offenses despite the fact that for the judicial system, councils were illegal institutions.

The irony of the position of the village council by the early 1970's should not be overlooked. As an official matter, the state legal system viewed village council process as an anachronism, a fixture of law ways of a distant past. As an unofficial matter, field professionals armed with mandates from their superiors to carry out impossible tasks of representation, prosecution and law enforcement over distant villages were vocal in their support of what they perceived to be continuing examples of Eskimo justice. Cultural sensitivity or other rationalizations aside, they needed Native community justice systems to resolve their own smaller problems without professional intervention.

An example of a council acting as a court appears in the following draft ordinance of a modern village:

Sec. 1. Establishment. The Council hereby reestablishes the VILLAGE COURT, which shall exercise all judicial authority for Native villagers provided in this law.

Sec. 2. Organization. The VILLAGE COUNCIL shall constitute the Village Court. Decisions shall be made by majority vote of the Council sitting as the Court.

Sec. 3. Powers. The Court shall exercise the following judicial powers:

1) hear and decide criminal charges for violation of Village Ordinances by members, provided that the Court shall not hear cases involving criminal charges for violation of village ordinances by nonmembers;
2) hear and decide civil charges for violations of Village Ordinances by members and nonmembers;
3) hear and decide disputes between members according to village, state and federal law, or village custom;
4) hear and decide disputes between members and nonmembers according to village, state and federal law, or village custom;
5) perform adoptions and make foster placements and
6) advise State and Federal Courts on matters of village law and custom.

Sec. 4. Enforcement of Decision. When the Court decides a case, it may, where appropriate,

1) require a member to serve up to 6 months in jail or a fine of no more than $500, or both, where the Court finds a criminal violation of a Village Ordinance by a member;
2) require either a member or a nonmember to pay a fine of no more than $500 where the Court finds a civil violation of a Village Ordinance;
3) allow a person to perform community work to satisfy a sentence or fine;
4) refer a person to treatment or counseling;
5) determine who rightly owns property and require a person to return property to its rightful owner;
6) require a person to pay for damages to another person's pro-

perty or person; and

7) do other acts according to village law or custom to preserve peace within the village.

The form of western adjudication has not made councils into substantive western courts, informed by a precise set of procedures, limitations, and professionalism. Indeed, according to Conn (7, p. 56),

> "...those who saw in village council activity kinds of tribal police courts were somewhat misled.

While IRAs can establish Native courts, the substance and operations of these courts could not be automatically assumed.

> Council techniques were originally not explicitly those of Western courts. They did not meet merely to assess innocence and guilt according to preset rules and to punish with fines and jail sentences. (7, p. 56)

In the past, elders would deal with problems not by focusing on individual offenders of custom and rule, but would raise the issue for entire classes of residents (such as all young people) or the community as a whole. Their action would constitute a re-affirmation of communal behavioral standards rather than punitive action toward an individual. As the standards became obscured or behaviors deteriorated, this re-education process was intended to intervene before problems became endemic and destructive. This process was incorporated into council functions.

Conn (7, p. 56-59) reports that:

> ...council techniques were calculatedly cautious and non-coercive. Persons asked to appear before Eskimo village councils and bystanders both had to be persuaded that council intervention was logical and appropriate. Councils did not enjoy the automatic, unquestionable authority behind badges of Western authority. They were, first, fellow villagers. Councils had to develop a clear, rationale for intervention and for punishment, if merited, on a case-by-case basis.
>
> Council intervention was highly selective. The guilt of deviants who appeared before the council was assured by investigation prior to inviting the deviant to appear.

Councils isolated and dealt with those persons not as likely to be amenable to other more important forms of village social control. Social ostracism was a method of non-intervention of far more influence than council process or even intervention by the trooper. Thus, for persons with roots in the village, and with a desire to remain there and economic and social survival rooted in continuing good relations with village people, the council served merely as a backstop to other forms of non-legal social control.

The village council dealt with problems which had escaped ongoing and more pervasive controls, controls that checked individuals without necessary intervention of others, be they police or merely relatives or neighbors.

Those strangers or persons with limited reasons to maintain a consensus with villagers were usually addressed on several occasions. Deviants were persuaded, educated, counseled and warned regarding village norms. Repeated offenders were fined or put to work, but only <u>after</u> both offender and the community were satisfied that the offender had broken faith with village norms. An attempt was made to "blue ticket" or expel persons who proved repeatedly that they would not abide with village norms.

While the norm of non-intervention into the conduct of others placed special checks upon the operating authority of councils, village councils had a special kind of knowledge that made their selection of deviants far more accurate than the mechanistic selection of deviants by police.

Village councils also had the capacity to see serious problems developing and to recognize their chain of causation. Problems were perceived, accurately, as problems that evolved from and that influenced ongoing relationships.

<u>Councils then were adept at constructing approaches to intervention that focused not merely upon punishment for past acts, but on the deviants' stake in preserving ongoing relationships in the village</u>.

As a legal mechanism, the village council was neatly balanced, between noninstitutionalized methods of social control, and the apparently unchallengeable and often unpredictable intervention of outside authority, police authority meted out without concern for village opinion, village reputation or ongoing relationships.

When the council met to deal with individuals' alcohol-related behavior, it did so within the social norms of the village. (7, p. 59-61)

Social norms had evolved to explain and place drunken comportment in the town and villages. In capsulized fashion, they were these:

First, that a drunken villager and a sober villager were perceived two separate persons. The conduct of a drunken person could not be ascribed to his known sober self. To place the responsibility upon a sober villager for what he did while intoxicated would be to undeservedly stain his social reputation, a reputation based on his behavior while sober.

Drunken behavior challenged the basis of the reasoned village council approach to social deviance. If the community did not blame a sober person for the acts of his drunken separate self, how then could a village council counsel or punish a person for those same acts? The focus of the council's blame, logically, came to rest on the source of the liquor.

A second social norm firmly rooted in Eskimo experience was that a person was not expected to remember what he did or why he did it when drunk. Village councils could not review acts of conduct over which a sober person had no recollection, nor could they fairly assess blame for those acts. The logic of repeated fines could and was questioned. Fines were not logical. The fining agent and not the person fined was made suspect by his unwarranted intervention into the business of a fellow-villager.

Third, the villages recognized that unlike pathological bullies or crazy persons, drunken behavior was temporary misbehavior by a person who was usually well behaved. A sober villager returned immediately to the fold of the village social consensus regarding conduct, appropriate and inappropriate without council intervention. But for alcohol, he was above reproach.

Fourth, the decision to drink was not per se a socially disapproved act which merited intervention. It was an individual decision that effectively shifted the responsibility for making rational decisions to others. Thus, fellow villagers could join the drinking villager by sharing his liquor supply or retreat from the scene in order to avoid him. Control of drinkers required special authority in the person who sought to control a fellow villager.

B. The Role of Magistrates

Without the protective system of previous prohibition and without a culturally-consistent mode of behavior management, councils had little effective control just as major socioeconomic and other transitions were rapidly encountered. Into this gap were introduced the magistrates.

Conn (7, p. 57-8) reports that "villages without duly appointed judges or

lay magistrates were officially presumed by state officials to be without law. What councils did and continue to accomplish to supplement state legal process was viewed as extralegal or even illegal, much to the chagrin of village councils challenged by strangers or young people for their acts."

Magistrates are village residents appointed by the Alaska court system to preside over village cases -- small claims, misdemeanors, and preliminary hearings on felonies. Magistrates have the power to pass sentence on those misdemeanants who plead guilty and the power to try those misdemeanors in which the defendant consents, in writing, to be tried by a magistrate. Magistrates also provide other routine administrative legal services for the village.

Magistrates have very limited powers and legal training. They duplicate, in many ways, the judicial burden that was borne by councils to judge violations of state law and local ordinance. In communities with both councils and magistrates, there is often an uncertain division of labor in the exercise of legal authority. Where they are mutually supportive, the council provides moral support to the socially-isolated position of magistrate and the magistrate relies on the council to help determine penalties appropriate to the offender, the offense, and the community.

The magistrate, like the council, appears to rely more on the form than the substance of western systems of conflict resolution. Their performance seems highly responsive to the norms and will of the village.

It has been suggested that these courts, while rationalizing and coordinating aspects of the justice system, also tend to erode the concentrated authority and counseling role (8) of the council in much the same way that local authority is eroded when the VPSO identifies more with state than local objectives. While the magistrate is likely to give considerable weight to community values and opinion and to formulate more regular procedures of jurisprudence,

the authority under which the magistrate acts derives from the state rather than from the community.

C. Local Law Enforcement

In order for rule of law to occur, both the passage and the enforcement of law are required elements. As there has been a general tendency for villages to delegate rule-making authority to the council, the council attempts to delegate enforcement to its own police, Village Public Safety Officer (VPSO), or state trooper. The VPSO is bound to enforce both village ordinances and state law in the villages; the trooper is bound to enforce state law only. Both the VPSO and the trooper are bound to enforce the local option law. Villages differ widely in their satisfaction with local law enforcement. Those larger communities with city police and/or resident state troopers or constables appear most satisfied with the level, if not the effectiveness, priorities, and methods of local law enforcement. Villages reliant on local VPSOs and distant troopers appear less satisfied because of the burden on the VPSO, the VPSO's perceived skill defieiencies, and the difficulty in obtaining trooper support. Some villages feel that the troopers come only after a major violation has occurred and spend their time building cases after-the-fact, whereas the village is more interested in keeping the peace. As a result the village invests more in its local council, that the council "be on the ball, have lots of meetings, and insist on things being in order."

For some communities, the threat of the state trooper and being sent to jail appears to be a more "viable", important, or effective deterrent than local penalties. This requires a good degree of certitude in the actions and outcomes of the coordinated efforts of VPSO, trooper, and court; as importantly, the outside threat appears to result in greater internal individual and community self-control.

Villages which have adopted an option under the local option law generally

still understand this law to be the "council's law" as enforced, for most practical purposes, by the VPSO or city police. Although the council does not directly enforce the law, it does establish many of the priorities and practices of the VPSO and/or police and does, in the absence of a magistrate, act as a court. The VPSO is the onsite person to support council directions and requires direct trooper assistance primarily when persons ignore the VPSO, the council, and the law.

Many communities feel that the small number and geographic distance of state troopers has led to less certain law enforcement and, therefore, increasing local self-reliance. However, many do not have the resources to hire their own policeman and must rely on the state-provided system. As a consequence, there is often great discontinuity in both obedience to law and in law enforcement. The more tenuous the links between law-making and enforcement, the less consistent law and order become.

Some communities attempt to resolve this problem by engaging more local energy in and support of law enforcement, through support of the VPSO and of the council members as representatives of the community. Because these solutions are also new and often untried, there appears to be great variability over time in law enforcement. As a consequence, the pattern of bad events leading to new ordinances which are effective for only a short period appears to be continuing.

The alternative solution is the local option law which, while redundant in many instances to existing community ordinances, is backed by state law enforcement and judicial processes and appears more permanent due to the electoral form of its adoption. Communities, however, are aware that the local option law did not create more accessible or timely trooper support, more effective VPSOs, or better cohesion between law making and enforcement.

D. The VPSO Program

The VPSO program is a new program, contemporaneous with the local option law; this has resulted in a coupling of these experiments and important interactions between them. While enforcement of the local option law is not a significant proportion of VPSO work (no more than a small percentage of the total law enforcement portion in most instances), the purposes of both innovations include the reduction of the serious behavioral consequences of alcohol misuse. Larger communities require their VPSOs to spend a large amount of time and energy to law enforce-ment, while in the smaller communities, public safety (fire safety, water safety, emergency, rescue, education) consumes the greater proportion of time. In terms of small village law enforcement, 80% involves alcohol-related disturbances, domestic violence, and other forms of violence. The VPSO provides earlier identification of and intervention into the trends leading to these serious results. The local option law is a tool which assists the VPSO in constraining alcohol which is one of the key contributing factors in these trends. In dealing with alcohol control, the VPSO needs to be seen as representing not only the council and the trooper, but the same community consensus which adopted the local option law. In instances of the control of negative social behaviors, the VPSO needs to be identified with the power of the state trooper since "no one wants to tackle the troopers."

The law enforcement tasks are the most problematic tasks confronting the VPSO because his/her other roles do not require the same level of social control. Community expectations are that the VPSO is to succeed with these serious problems (via observing, intervening, controlling, reporting). This places the VPSO at a high social and physical risk in alcohol-related (therefore, potentially seriously out-of-control) situations, particularly if the VPSO is operating without the close support and direction of both the village council and the supervising state trooper.

Some VPSOs want to be full-time police, rather than fulfill their broader tasks as public safety officers. These "police" VPSOs would, if they could, spend all of their time dealing with disorderly conduct, family disturbances, misuse of weapons, and all alcohol-related assaults and other offenses. Their presence has already contributed to the sense that there are fewer serious crimes and more misdemeanors being reported now.

Some of the communities that rely on VPSOs for law enforcement have had earlier experiences with so-called "CETA cops", local police personnel who lacked sufficient training, equipment, support, and facilities to accomplish community objectives. Lacking detention and sleep-off facilities, these "CETA cops" would often take the drunks off the street and take them home with them. This form of intervention was probably quite ineffectual if one examines the unfortunate public safety statistics of this period. These communities often tend to view their VPSO as being the "babysitter to the drunks", a poor image for the public safety officer as well as a diminished assessment of the alcohol problem in the community. These communities, in reviewing their recent past, appear to have drawn two conclusions: 1) drinking must be made illegal and 2) the babysitters must be traded in for law enforcers.

It appears clear that, in those communities which require assigned formal police powers (unlike those communities which have maintained their traditional forms of authority), the local police, constable, or VPSO constitutes a critical element in providing the certitude of reporting, early identification and intervention, and pursuit of conviction and penalty of alcohol and alcohol-related violations. Underlying this element are several others, without which these officials lack effectiveness:

-- council support

-- trooper support

-- judicial support

-- community support

-- equipment support (particularly holding facilities and reliable, secure communications)

-- renumeration sufficient to family, livelihood, and status needs (in particular, comparable pay for comparable work; sufficient pay to offset inevitable risks and long hours away from family; sufficient pay to offset loss of peer support and to induce reduced turnover)

-- continuous skill training, particularly "hands-on, on-the-job training" in the home community in areas of both practical law enforcement and the practical interpretation of legal language and procedure.

These findings are consistent with those of Conn (7, p. 84) who reported that:

> "Where the police were most effective, they found support in strong councils. The councils, in turn, were prepared to deal with alcohol-related conduct before it had turned violent because these communities were also prepared to do so. Both the councils and police were capable of intervening while problems were still minor ones.
>
> What rationale developed to allow for successful intervention into the drinking behavior of other persons? It appears that policing at the village level was successful where both constables and councils shared with the community - both drinkers and non-drinkers - a belief that intervention before violence occurred was appropriate.
>
> Without this shared attitude, the Native policeman was required to endure violent responses to his new role without reinforcement by village councils."

There is a very broad range of on-the-job problems confronted by VPSOs, including low pay, long hours, limited training, limited local support, limited external support, lack of legal training and expertise, and so on. Village and city councils, while disturbed about the high turnover rate among their initial VPSO incumbents, are still invested in obtaining real VPSO support.

One problem confronting councils and their VPSOs is often a discrepency bet-

ween them on their desire and ability to set and enforce rules. This does not appear to be a value conflict, but a time lag between these desires and abilities. A council that moves slowly in establishing and enforcing local laws will frustrate an ambitious VPSO by denying him/her the direction and support desired.

Alternatively, a council may have more demands of a VPSO than he/she is prepared to provide. VPSOs require clear direction and support from their councils, in the form of paper instructions, instructions to the community residents, physical support (such as deputies), all of these in addition to the requirements placed by the state and the supervising trooper. One respondent suggested that his community voted to go "dry" but would prefer not to be dry. He knows this because the VPSO gets very little support in enforcing the local decision. The power structure of the community opposes strict enforcement, thus resulting in no enforcement. The VPSO needs a clear majority in support in order to enforce. Otherwise he is alone, threatened by bootleggers and buyers, and so on; these dangers are a current reality in some communities.

Since the role of the VPSO is one of a classic peace officer, his primary responsibility is to act on behalf of village standards and authority; if the village does not support him personally or if the laws are not consonant with village objectives, purposes, standards, or methods, he has no function. To the degree that the council supports the VPSO, the lawful actions of the VPSO are depersonalized (that is, removed from him/her as an individual person) and made communal (that is, acting in the place of and on behalf of many or all the residents).

In the same way that the VPSO avoids individuation by acting as the agent of the council, the council avoids individuation through group action. This is most clear in those situations where council members and others actually accom-

pany the VPSO in difficult situations.

The VPSO also requires the support of the state trooper, whose agent he/she is, as well. The VPSO needs to be seen as having the weight of the external authority behind him/her, even though that authority is not directly present but only implied.

Finally, the VPSO may need the presence of and community support for a local alcohol control option. Since the authority of the local electorate and the local council seem enhanced by the VPSO and the local option law, they appear to be mutually supportive. In fact, it is probable that the local option law, without a local enforcement person like the VPSO, would not succeed in a number of villages. Conversely, the VPSO, without the legal tool of the local option law and the authority of the state, would have a difficult time constraining the behaviors and the substances not already constrained by village ordinances.

The VPSO's response to the enforcement of the local option law is dependent on who that individual is, why he/she was selected, and the stand taken by those who selected him/her. An individual selected because of his/her reputation for supporting law and order by a council that strongly supports the enforcement of the local opton law will be an effective law enforcement officer. An individual selected without regard for the fact that he/she is related to several bootleggers, has done some small time bootlegging, and has a reputation as a "partyer" would be predictive of less effective enforcement.

The villages and the contracting agencies try to hire non-drinkers, in order to have VPSOs who are less likely to turn to alcohol when they are under great stress. A VPSO who drinks in public, who drinks to excess, or who has other drinking problems that come to the attention of the community, makes it harder for the VPSO to enforce laws controlling alcohol or behaviors "excused" by alcohol. VPSOs tend to do their drinking outside of the community (hopefully where they won't be seen or reported) or in the privacy of their homes. Much of the

turnover in VPSOs is attributed directly or indirectly to the use of alcohol, because it has affected their performance to a point where the council finds it unacceptable.

The VPSO does not appear to have a special problem enforcing the local option law among friends and family because all of the VPSO's enforcement contacts involve friends and family; indeed, most involve alcohol as well. Again, the more basic issue is "who" the VPSO is. If his own personality, family identification, loyalties, or drinking behaviors rule his work role, he is prey to accusations of selective enforcement, double standards, factionalism, and disloyalty.

The growth of local police and public safety functions, as presently constituted, funded, and administered, has so short a history that it is difficult to draw firm conclusions about their ultimate merits. Nonetheless, respondents in this study, while readily admitting many of the serious problems confronted in the early implementation of new systems, continue to assert that these systems will be required in the future. They are troubled by perceived deficiencies, as noted above, but suggest that improvements in these and other areas (such as candidate screening) will result in more professional personnel, a lower turnover rate, improved law enforcement practice, and better communications between citizens and law enforcement personnel on issues such as selective enforcement and interpretation of existing law.

It is difficult to assess the meaning of the high turnover rate among the initial set of VPSOs. The factors which contribute to turnover include:

-- individual failure or inappropriateness
-- inadequate compensations
-- high social costs (loss of peer relationships, family relationships, personal drinking, threats, and so on)
-- inadequate council and community support
-- inadequate trooper support and training for the required tasks.

It is important to note that the high turnover rate is not an indication of program failure. It is an experiment for the VPSO, the state troopers, and the community. For the individual, it may be the first serious work experience and may overtax the capabilities of that individual; he/she is nonetheless introduced to new work experience, new skills, and new self-awareness. Other VPSOs are lost upward, through upgrading to village or city police.

For the community, the council may see the VPSO as just another wage-earning opportunity for one of its unemployed residents or a political or family plum. By the time the initial VPSO leaves his work or is terminated for cause, the community may have discovered a greater purpose for the VPSO and be more careful in the selection and more supportive of its second incumbent. It also retains, in the person of the former VPSO, some of the important skills learned by that person. For the state troopers, lessons are learned which lead to the modification of the program to solve initial problems. They also have available a pool of persons in the villages who have more specialized training in law, law enforcement, and public safety which can provide long-term benefits, if unmeasured, to long-term community welfare.

Most villages want the trooper rather than the VPSO to handle the serious alcohol violations; it is easier to have an outsider do the enforcement, since local social constraints do not apply to troopers. This preference depends somewhat on the amount of power given to or available to the VPSO, his personality, his geographic and/or cultural origins, and his position in family and cultural obligations. The more "outside" a VPSO is, the more like a trooper he appears.

In summary, the relationships among the local opton law, the city or traditional council, the village public safety officer (VPSO), the state troopers, and the local or regional judiciary are critical. Adequate enforcement depends upon the mutual support between the council and the VPSO and the mutual support

between the VPSO and his/her supervising state trooper. The relationship between the VPSO and the council requires a clear commitment of the council to actively and publicly support the VPSO's mandated responsibility. The relationship between the VPSO and the state troopers requires the troopers to provide extensive and continuous skill training, close supervision and directions, short response times, and direct physical support. The more isolated the VPSO is from council support or from close trooper support, the less likely that the VPSO will be seen as an effective enforcement person and the more likely that the VPSO will not remain at the job. The actual numbers of VPSOs may be less significant than the maintenance of these mutual support systems.

E. The Role of Religion

Religious beliefs play a multi-faceted role in both alcohol use and alcohol control in village Alaska. Most major religions strive to control the excessive use of alcohol and the behaviors resulting from that use. Enforcement is achieved less through the threat of punishment than through the shame that would result in being caught.

Different religions and ministers of different religions also differ on the importance they attach to the ban on alcohol. Some religions apply very strict standards on their members on a year-round basis, some are more tolerant of its use, and still others have standards that vary during the year. For example, while Lent is a period of abstinence in many churches, the periods immediately preceding and following Lent are commonly periods of excess.

Religious beliefs can be, concurrently, a mechanism for alcohol control and the rationale for increased consumption. These apparently conflicting forces are reconciled when viewed in the context of the ceremonial role of alcohol. Alcohol is often used, for example, as a component of celebration. Having completed prescribed periods of abstinence, a celebration is often called for.

Villages that are described as "very religious", in which the church members are also community leaders, commonly exercise a great deal of social guidance and control over other residents; they appear to be able to exact greater conformity through both secular and spiritual pressure. The continuity of strong church presence and leadership is often a key factor in villages' ability to retain the goal of alcohol control and to maintain efforts in behalf of this goal. The support of other members of the church and the power of prayer are often mentioned as key elements in "saving" village members from alcohol.

F. External Forces and Supports

There is no evidence to support an argument that the local option law, the VPSO program, or any other single action or program is responsible for the perceived improvements in quality of life for those villages that see improvements. It is more likely that many concurrent actions and events are combining to generate this impression. Other factors include health programs, alcohol prevention and treatment programs, revenue-sharing, growth of local government, slowed outmigration of young people, increased employment, positive changes in demands on and performance of leadership, increased community goal-oriented activity, and increased health awareness and practices (diet, sleep, exercise, relaxation, social ties, stress management through time-outs, absences from villages, subsistence).

Negative changes include the desire for instant solutions to problems, promoted by agencies and television. Many villagers desire a pill or a shot and other magic to instantly cure problems. They are dismayed when they are told how much their community and personal lifestyles have to change. The problems, they have been told, have been determined by society, so society is expected to fix it.

The range and quality of new supportive services are not distributed equally

through all regions and villages. Their presence is due to a combination of factors including the village knowledge of the service, their desire to have it, the responsiveness or assertiveness of councils and non-profit corporations, the ability to receive legislative (and therefore financial) support, and so on.

There is no basis to demonstrate that communities which receive such service are better because they receive the service; it may be that the healthier a village is, the more likely that it is to seek and receive services. Thus, it may be that the less disabled communities need support services less than other communities but can put them to better use. Once a community has determined to acquire control over its problems, the services appear to interact to move it faster but in the same direction. Services without preceding community determination will not create the determination. The source or impulse of the desire to exercise such control is unknown.

The regional non-profit corporations often constitute the villages' best support team in acquiring new services, since many village health, alcohol, public safety, and social services programs are contracted to and through these corporations. These corporations operate according to the particular character, needs, and politics of their regions. For example, some have been quite outspoken and aggressive in "assisting" their villages to hold local option law elections.

The regional profit corporations, while having a smaller chartered role in supporting the social and cultural well-being of their shareholders, have also exercised some influence in stemming the rise in alcohol problems. In some instances, corporate economic decisions have been made subordinate to the effort to control alcohol. These corporations can be a powerful ally to villages seeking control over regional retailers.

There is a wide variety of alcohol treatment and prevention programs in the

different regions and regional hubs of the state, as well as village-designed and village-based programs. One of the most prominent programs provides Village Alcohol Education Counselors (VAEC) to subregions in the Yukon-Kuskokwim region. The tasks of counselors include working with individuals and families with alcohol problems as well as provide educational opportunities for the community, in particular the school children, on the dangers of and solutions to alcohol abuse.

In the Yukon-Kuskokwim region, a village must develop an active alcohol council before the regional health corporation will fund a VAEC. This requirement recognizes the need for tangible, if not unanimous, community support before inserting yet another service provider. In many villages, the alcohol counselor must adopt a very low-key approach to the problem, due to the sensitivity of and lack of community consensus on alcohol.

There does not appear to be any discernible relationship between a community having a VAEC, an alcohol council, or a VPSO and holding a local option law election. There are probably too many other factors which can account for lack of, including other forms of local control, concern about state troopers, different perceptions about the severity of the problem, different modes of consensus, and factionalism.

Although having an alcohol counselor and an alcohol council does not predict a community's holding a local option law election, a strong counselor and supportive council can keep the community's attention actively focused on the alcohol issues and produce local efforts in behalf of their solution. While it is unlikely that having a VAEC will produce a local option law election, the spirit that underlies obtaining a VAEC is also likely to support effective controls on alcohol.

Other external supports include the State Office of Elections, the Alaska Legal Services Corporation, RurALCAP, the Department of Community and Regional

Affairs, the Department of Public Safety, the Department of Law, and the Alaska Court System. The Office of Elections is significant in that it supervises the procedures and certifies the products of local option law elections. The Alaska Legal Services Corporation (ALSC), through its Alcohol Project and its field attorneys, has proved vital to the dissemination of detailed legal information to villages and to other support agencies. The Department of Community and Regional Affairs will be largely responsible to respond to village inquiries about the law as the ALSC special project is closed. ALSC has ensured that there will be continuity in support of villages' information needs, that other agencies will be there to answer their questions, and that a variety of materials will be readily available as support documents to community considerations.

The state law enforcement and judicial branches will be responsible for completing their separate obligations as required by the local option law, to see that the enactment of options is not an empty gesture by villages. They are also in the difficult position of encouraging villages to adopt a variety of appropriate and necessary alcohol control measures as long as these measures are not illegal or excessively extra-legal; they do not want to be caught in the position of sharing a village's values, but having to side against the village in civil rights disputes.

The most important immediate representative of external support is the Alaska State Trooper. Although the selection and training of troopers are of a very high order and the entire service viewed as exceptionally professional, the troopers are so thinly spread throughout the Bush that the entire service is assessed on the basis of each village's direct experience with "its" trooper. This trooper is judged by the community's demands and expectations, the trooper's own personality and problem management style, and the limitations

imposed on him by state law, his supervisor, and environmental conditions. As a consequence,

- — some are viewed as an immediate safeguard for villages
- — some are viewed as far too few, distant, and busy to constitute a viable deterrent
- — some are viewed as too interested in post hoc criminal investigation and too uninterested in deterrence
- — some provide a range of extra-legal supports, such as the trooper who, while cautioning the community against illegal laws and practices against members, still counsels the community offender and puts him on notice that the trooper is watching him closely
- — some provide insufficient support, as viewed by the community, such as the trooper who was asked to explain how the local option law was best established, implemented, and enforced and who replied, by phone, "Make up your own law."

It was reported that troopers stationed in rural areas were familiar with and supportive of the local option law. Later, we shall note in what ways troopers attempt to assist villages in their own control of alcohol. However, within the villages there was a general disappointment that trooper support of village rule and control of developing situations were so limited and late. This current evaluation was not unlike that found in the early 1960's:

> Critical to the operation of the system was effective state backing. What council presidents and village residents discovered was that the State Police were capable of dealing only with the limited number of violent occurrences and not with lesser offenses that could lead to violence. Many requests for assistance went unanswered." (7, p. 24-5)

Two other critical elements in external supports are those alcohol distributors and commercial carriers who serve villages. Generally, the local and non-local retail distributors and carriers appear to positively respond to the new

restrictions imposed by village adoption under the local option law; indeed, in the past, many distributors and carriers, with a few noticeable exceptions, were reported to have responded positively to village letters informing them of ordinances announcing restrictions on importation. Distributors and carriers appear to honor these restrictions up to the point of violating the rights of buyers and travelers. They suggest that it is really up to the villages to take action once the alcohol has been purchased or delivered.

Air charter services appear to accede to community restrictions on alcohol importation whether these restrictions result from ordinances or the local option law. (The strength of the community feeling may be more significant than the language of the ordinance.) Air carriers were assisted by the specificity of the new law which not only authorizes, but compels, them to restrict the alcohol-importation actions of passengers and the contents of cargo. Previously, these carriers did not want to assume the liability of coming between the rights of passengers and the wishes (via local ordinances) of villages. The air carriers now bear the presumption of importation if they <u>knowlingly</u> transport alcohol even though they do not <u>intend</u> to deliver it to an intermediate dry village. Carriers, it is reported, have created paperwork difficulties which increase the burden, time, and risk involved in illegal importation.

For the purposes of effective enforcement, some police would have preferred being able to pursue <u>all</u> the elements in the chain of handling which have been put on notice about restrictions on importation and which know or should know that their actions violate these statutes. These elements include -- alcohol advertisers, retailers, mail and phone order suppliers, all handlers and transporters, and receivers.

IX. The Form and Limitations of Local Ordinances Governing Alcohol

In addition to persons and institutions exercising social controls over alcohol, social controls have been written into formal ordinances and rules. For many years, city and village councils have used ordinances and rules to control a variety of aspects of community life. Many of these ordinances have been poorly drafted, violated either state or federal law, and have proved to be unenforce-able by villages, due either to lack of state law enforcement support or successful challenge by residents or non-residents. Conn (8, p. 39-41) reports that

> Villages have requested assistance in the drafting of their own town statutes. They realize that some skilled professional advise is necessary in order to make the laws enforceable within the state system and to allow them to meet local problems, remedies and reasonable sanctions.
>
> When ordinances have been sent to Juneau to an agency constitutionally obligated to help towns and villages, they have been filed away without comment. Villages have been left in a legal never-never land as troopers and state officials refuse to apply village ordinances. Even village magistrates scorn village ordinances.
>
> No single area of village lawmaking has suffered more from this inability to discover and frame ordinances capable of support and reinforcement than the realm of alcohol control. This can be of little surprise when one realizes that until 1953 Alaska law prohibited sale to or purchase of liquor by Alaska Natives. With its repeal and the coming of statehood, in 1959, village councils discovered that their own bans on possession of liquor in villages were not officially lawful. In the early 1970's public and private drunkenness statutes were decriminalized. While towns responded with vigorous law enforcement under the guise of "protective custody," villages lacked this option. What had occurred was the removal of territorial and later state legal support for preventive actions which villages were capable of carrying out to anticipate and avoid liquor related violence.
>
> Villagers were told to turn back to "the old ways" and draw upon a village consensus on possession backed by village law. But the "old ways" were formed out of a coalition of white and Native authority. The "old way" did not contend with prepaid orders by telephone, improved air and land transport and wage opportunities of a younger generation as demanding of their official legal rights as other Alaskans.

In response to this breakdown, villagers looked for support from each "legal expert" who flew in. Few visitors were prepared to discuss legal options available when prohibition was not. Most took the path of least resistance and gave verbal support to searches at the airport and other village remedies. It was, after all, "their village."

Villagers discovered that it was almost impossible to draft ordinances which directly accomplished the villages' purposes and still met externally-imposed legal requirements. Among villagers' unpleasant surprises were:

-- the inability to ban possession or use of alcohol, marijuana, and other substances under the individual's right to privacy; possession, use, and privacy are not viewed as rights but as "loopholes" by villagers
-- the inability to search and seize cargo, luggage, and property on the person of or in the homes of individuals
-- the inability to require state enforcement of local ordinances
-- the inability to require state enforcement when local fines for violation of local ordinances have not been paid
-- the inability to pass more effective bans on bootlegging and contributing to the delinquency of minors than existing state legislation
-- the inability to ban the making, possession, and use of homebrew
-- the inability to expel or banish residents for violation of ordinances or prohibit the return of convicted offenders
-- the inability to ban only certain alcoholic beverages
-- the inability to limit the amounts of imported or possessed alcohol
-- the inability to limit importation to certain seasons
-- the inability to limit the importation of possession by specific persons
-- the inability to make rules that were more lenient or more strict than those of the state (7, p. 7)
-- the inability to curtail the civil and procedural rights of individuals, even for their own safety
-- the inability to protect villagers from arrest for violating the civil rights of other citizens.

In effect, villages were thrown on their own devices yet told they had very few of them. Conn (7, p. 7) reported on a 1962 meeting wherein a public official said that "the villages, legally, cannot have an ordinance that will conflict with the State laws, but she felt that the village councils can make their own rules and make their own punishments as an unincorporated village."

In order for the troopers to act in support of the village, the violation would have to be re-cast as a violation of state law. For example, since the state does not allow villages to ban the making of homebrew, the trooper will intervene only when the maker sells the homebrew or gives it to a minor; so the call from the village to the trooper "suggests possible sale to minors."

Some ordinances are redundant to already existing state statute, such as ordinances prohibiting the sale of alcohol without a license. These actions are probably due less to ignorance of state law than to a village desire to symbolically embrace this ban and re-emphasize the great concern about bootlegging.

While villages have passed local rules and ordinances for many years, apparently many incorporated villages did not know that they also had the ability to pass emergency ordinances governing alcohol. Emergency ordinance-making is a power municipal governments have to enable them to deal with or abate short-term crises, such as unsafe timbers on a dock. Stretching the intent of the statute, no doubt, this power was used by city governments to ban alcohol importation for a period of 60-90 days. This enabled an immediate, temporary solution to local governments. Following the enactment of the local option law, this power was removed, thus requiring a lengthy time delay between problem-recognition and effective action and resulting in a semi-permanent solution to a potentially short-term or seasonally intermittent problem. While in some cities the passage of emergency ordinances banning importation of alcohol was seen and treated as permanent and had long-term positive social outcomes, most communities and, in particular, their younger members clearly understood the limited nature of the ban; they treated the ban as illegal, invalid, and unenforceable, thus eroding the basis of consensual law.

The power to pass emergency and standard ordinances on alcohol use and behavior was important to villagers because it was used to isolate exactly those

actions harming the community, to limit the ability of distributors and carriers from delivering alcohol, and yet avoid the implicit immediate threat of trooper involvement and penalties imposed by non-local courts. The "emergency" nature of these ordinances does not appear to have been a frivolous use of power. In some instances, the emergency occurred on a regular, intermittent basis (such as fishing season when outsiders appeared, or during major celebrations) making regular intermittent bans appear to be a reasonable response. In other instances, communities were indeed responding to novel emergencies.

The basic arguments for passage of emergency ordinances against alcohol have been:

-- alcoholism is epidemic

-- violence and public disturbance are out of control

-- visitors from elsewhere have overloaded the ability of the community to deal with their drinking and related problems

-- availability of alcohol is too easy and rapid

-- alcohol-related problems "jeapordize the wellbeing of families, the employment of individuals, the stability of businesses, and the health of individuals."

Although this use of an emergency ordinance may stretch the "intent" of that power, the effect has been that the community perceives itself as having banned alcohol and residents reduce their overt importation activities and attempt to conceal their drunken comportment from other community members.

Below are presented two examples of preambles to emergency ordinances:

> In recent weeks problems directly related to the availability of alcoholic beverages have increased. Residents from outlying villages as well as residents of the City of...are able to obtain sizeable quantities of alcoholic beverages within three to twenty-four hours. The size and numbers of the shipments indicate that much of this alcohol is being sold in violation of local option and consumed in..., causing problems of violence and vandalism which the City is not in a position to control. Alcoholism is becoming epidemic in...,

jeopardizing the wellbeing of families, the employment of individuals, the stability of businesses and the health of individuals. The only viable course open to the City at present is to stop the importation of alcoholic beverages into City limits. Because the need is immediate and requires quick action, an emergency is declared.

The City Council recognizes that the over-consumption of alcoholic beverages is responsible for an increasing amount of violent incidents which often cause severe personal injury or property damage and also contribute to the breakup of families, the neglect of children, wife abuse and other problems. Alcoholism has in recent months been the direct or indirect cause of a number of tragic deaths in and surrounding... Alcoholism has also been jeapordizing the stability of businesses, the employment of individuals and heatlh, has contributed to considerable vandalism and has generally caused the quality of village life to decline. The sale, in violation of local option, of bottles of hard liquor has been a major factor in most of the above mentioned incidents. In most cases, it has been hard liquor rather than beer or wine, which has caused the majority of severe problems in our community. Recognizing that a critical problem exists and at the same time not wishing to overly interfere with the rights of individuals, the City Council wishes to address the problem by prohibiting the importation of hard liquor only, thus continuing to allow the importation of wine and beer. Because the need is urgent and the Council wishes to reduce the danger of alcoholism before the boating season begins, an emergency is declared.

The passage of ordinances did not cease with the enactment of the local option law nor even with local option law elections in the villages. While in some instances, a local option law superceded existing ordinances, in other instances it led to a spate of new ordinance-making. Some of these ordinances were seen to modify, by specification and council action, the results of the election. There is no basis in the law for such modification. In other instances, the ordinances specified the fines to be levied on misdemeanor violations of the local option law. In still other villages, the local option law was used as a backstop; that is, the communities would enact their own desired ordinances governing alcohol use, importation, and behavior with the threat that, if violators repeatedly ignored these ordinances, they would be reported to the trooper for violating the local option law.

It is noteworthy that these ordinances are sponsored not only by the city or village council, but by other community institutions:

— "the 1983 new X Village Council and X Women's Council have met and decided to reinforce the Village Liquor Law. This Ordinance is supported by the Village Council, Women's Club, and the State Trooper."

-- "Joint agreement in session made by both city council and IRA council members of X ..."

The following are examples of some of the legal and illegal ordinances passed by some Alaska villages. They are presented to show the variety and intent of villages and some of their awareness of legal limitations:

-- Any person seen or reported to be drunk and disorderly in a public place be immediately removed to his or her place of residence by a police If this person is violent or in any way resists such removal, person will be taken into protective custody within the City Sleep-off Center until such time as the person is able to be released at no personal or community risk. Additionally, if the return of such a person to his or her place of residence is seen to cause a safety hazard of any that person will be similarly confined to the City Sleep-off Center.

-- The police officer in charge of the situation may take any steps to ensure the safety of those involved, including body search, confiscation of all potentially dangerous objects and the use body restraints needed for safety purposes.

-- It is not necessary for the City Police to bring in (the) complaint for the ordinances to be enforced. The Council may and will act on its own initiative or on the complaint of any private citizen.

-- Confinement to the City Sleep-off Center will constitute protective custody. In no such case will an arrest be made or any entry made into that person's criminal record in regard to such confinement.

— Baggage coming in at the airport, or river front may be checked by the police only if the police have clear, specific reasonable cause to believe that such baggage may contain hard liquor. Clear and specific cause is defined. A person's private baggage which does not show any obvious sign of containing hard liquor may not, under any circumstances, be inspected by the City Police or other deputized person.

-- All persons taken into protective custody and confined within the City Sleep-off Center shall be billed for the costs of such confinement, as determined by the City Council.

-- It shall be unlawful for any person in the City of...to carry, conceal or transport any open bottle, can, or other container of intoxicating liquor or beverage; such open container being defined as a container, bottle, or can which has a broken seal or which is in some other way obviously open, on any person in a public place as defined in Section 2 or in any automobile, or on a boat, or on a snowmobile, three wheeler or any other vehicle.
-- It shall be unlawful for any person(s), firms, partnership or corporation to bring any alcoholic beverages to the City of...by ALL means (such as personal carrier, luggage, mail order, air freight, etc.).
-- It shall be unlawful by any person(s), firms, partnership or corporation to possess, consume or conduct in disorderly manner due to intoxicating beverages within the City of...
-- It shall be unlawful for any person to motivate or induce another person to furnish him or her with any intoxicating liquor or beverage.
-- It shall be unlawful for any person to consume any intoxicating liquor or beverage in any public place; be it an alley, street, restaurant, recreation hall, or other business establishment.
-- Any alcoholic beverages brought into or found within the City of...shall be confiscated. Upon conviction of the violation of this ordinance, any alcoholic beverages which were confiscated shall be destroyed.
-- Disorderly conduct, whether or not under the influence of alcohol, is prohibited in all public places, public functions (movies, dance, etc.), and in the homes of other people. Violations are subject to a fine of not more than $100 for each offense or, at the discretion of the City Council, work at a rate of $2.10 per hour until the fine is paid.
-- It is prohibited to discharge a firearm while under the influence of alcohol, or to threaten a person with a firearm, knife, or any other weapon, whether or not under the influence of alcohol. Penalties shall be a fine of not less than $100 nor more than $500, or immediate referral to State Troopers, at the discretion of the Council.
-- It is prohibited for a minor to drink alcohol or to inhale the vapors of volatile liquids (gasoline, etc.). Anyone who does will be restricted from movies and other activities and will be made to work as the Council sees fit. Anyone who willfully furnishes alcohol to a minor is subject to the same penalties as for ordinance 1.
-- Anyone making alcoholic brew without a license will be reported to the State Police. (7, p. 4)
-- No alcoholic beverages may be imported into the city limits of...except for the following:
   A. Alcoholic beverages used in religious services.
   B. Alcoholic beverages ordered prior to the passage of this ordinance upon proof of the date of order.
-- No Alcoholic Beverages may be imported into the City of...except for the following:

A. Beer or Wine.
B. Other Alcoholic beverages ordered prior to the passage of this ordinance upon the presentation of proof of date of order.

-- It is unlawful to bring in, send, or order by one person or charter more than 2½ gallons of hard liquor or 3 cases of beer or 3 gallons of wine within one day. (10 quart bottles or 1 case of 5ths).
-- ...can only bring in or possess 3 bottles or more than one case of beer.
-- If a man is drunk and makes trouble, will be stopped by the council and if he does not obey the council will be fined $10.00. (7, p. 4)
-- If anyone from any other village should get drunk in town or making trouble, should be fined $10.00. (7, p. 4)
-- Person contributing alcohol or liquor to a minor will have two (2) charges against him, both Village Law and State Law.
-- Anyone of age transporting liquor to the Village of..., or appearing to be under the influence of alcohol will be prosecuted as follows:

1st Offense: $150.00 Fine
2nd Offense: Will be reported to the State Trooper.

-- Any teenagers appearing to be under the influence of alcohol will be prosecuted as follows:

1st Offense: Will be brought before the Council with the parents.
2nd Offense: $50.00 fine
3rd Offense: Will be reported to the State Trooper.

All fines must be paid within five (5) days.

-- Fines

Section I

1. $150.00 or 25 hours city work within one week
2. $200.00 or 33 hours city work within one week
3. $250.00 or 41 hours city work within one week

Section II

Minors must appear before Council with parent or parents for probation and/or city work program.

-- ...is a Dry Village.

Therefore, there shall be no drinking any alcholic beverage of either store bought or home made.
Therefore, there shall be no alcohol beverage brought into the Village by any kind of transportation.
Anyone breaking either one of the above rules in the first offense will be warned of rule number 3 by either the village police or council members. He/she will be recorded in the book.
Second time who was warned before will be fined not less than $100.00 and put to work in the village, any work detail made by the village council.
This will also effect anyone from other villages.
In either case any damage done will be paid for and fix the damage done by the person.
Please note that we have you in our (file) book, which means that we (the council) will enforce these laws next

time you are seen drunk.
We hope not to do this but you give us no choice.

Reservations exercised even greater restrictions. For example, the Council of one reservation ordained that:

> Sec. 1. It shall be unlawful for any person to bring in or aid in bringing by any agency, intoxicating liquor in or onto (the) Reserve.
> Sec. 2. It shall be unlawful for any person to barter, give or sell intoxicating liquor on (the) Reserve.
> Sec. 3. It shall be unlawful for any person to have in his possession intoxicating liquor within the jurisdiction of (the) Reserve; the term "in his possession" shall include intoxicating liquor in the home, residence or abode of any person, and also upon the boat of any person within three thousand (3000) feet of the above line.
> Sec. 4. The term "intoxicating liquor" as used in this ordinance shall be deemed to include whiskey, brandy, rum, gin, wine, ale, porter, beer, hocchinoo, and all spiritous, vinuous, malt, and other fermented or distilled liquors fit for beverage purpose and having an alcoholic content of more than one percent of alcohol by volume.

The power of incorporated villages to fine persons for violations of local ordinances is of interest. Conn (7, p. 12-3) reports that, in 1962, shortly after statehood:

> "To the further surprise of some councils who had emulated territorial commissioners and levied fines, state police officers now informed them that this authority, along with the authority to prohibit manufacture of homebrew did not enjoy overt support of state legal officials. The council's fining authority had given them symbolic identity with other mechanisms of white law such as the Bethel commissioner. Now it appeared that this method of identifying village legal power with state legal power would not be supported by state legal authorities. It appeared then that the only basis of authority to be found for this form of alcohol control would be through uniform action among the Eskimo villages and not from state law."

The significance of Conn's choice of language -- "overt" should not be ignored; repeatedly, state legal officials have encouraged villages to take advantage of all of their options and tools to combat the serious threat posed by alcohol and have informed them of the severe limitations on such actions posed by state and federal law. In effect, their message has been heard as "Do what you must, don't let us catch you doing it."

Conn elaborates further that, while villages were concerned that their fines be uniform with one another and with state penalties, a reasonable act of equity, the state was concerned about informing villages that they were not allowed by law to fine offenders, unless the offenders are agreeable to pay the fine; that is, villages only have power if members and others voluntarily consent to that authority. The villages fine offenders in order to deter them from future offenses. When the villages ask for trooper assistance in enforcing the fines for purposes of deterrence, the trooper can work only on a criminal complaint itself, not on the fines.

When a community sees that its ordinances and enforcement methods are effective in accomplishing community aims, it tends to keep these same systems rather than experiment with other methods. Thus, some communities feel that the state support provided by the local option law and the limitations contained within that and associated laws would be a step backward in terms of community self-determination of purposes, goals, methods, and autonomy.

The effectiveness of ordinances and enforcement appears to decline over time, due to changing community priorities and the assignment of enforcement responsibility to individuals. This decline is stemmed somewhat by council elections, circulated petitions, and other regular opportunities to discuss, amend, adopt, and advertise public policies, laws, and ordinances. While the community is often in a hurry to solve its problems and hopes for immediate positive changes in response to public actions, most community members accept that change cannot completely occur overnight and that it may take two or three years of concerted and repeated action to finally effect the change.

A significant number of villages appear to be finding that the real-life outcomes of the local option law have been positive, so far. On the other hand, many feel that the framing of the law was in many ways inferior to the creative

and flexible council-designed, enacted, and amended ordinances already on the books. Some of these legal, extralegal, and illegal alternative responses have been mentioned earlier. One issue that was raised repeatedly was the villages' inability to limit rather than totally prohibit importation; the villages tend to be more concerned about the importation of cases of alcohol than about bottles of alcohol. Some feel that there would be more community unanimity over limited importation than prohibited importation, because many residents do not want to be hypocrites and vote for laws they know they themselves are going to break. They also note that cases of alcohol are more visible, more open to resale, more likely to find their way to children, constitute a more publicly flaunted use, and can be prosecuted easier and without testimony from family and friends.

As a result of the inflexibility of the local option law compared to village-designed methods, the Yukon-Kuskokwim Delta Mayor's Conference in 1982 passed a resolution specific to this perceived inflexibility. It states that:

> WHEREAS, allowing local communities maximum flexibility in dealing with alcohol related problems within municipal boundaries is in the best interests of community residents, and
> WHEREAS, reflecting those feelings, some Municipal Councils have enacted ordinances which have selectively prohibited the importation of certain types of liquor or regulate the amount of liquor which may be imported into a village at any one time or during any time period, and
> WHEREAS, the State has taken the position that such ordinances are not an acceptable option and cannot be recognized under state law, and
> WHEREAS, the more flexible options mentioned herein have been tried and found to be workable in other areas outside of Alaska,
> BE IT RESOLVED BY THE YUKON-KUSKOKWIM DELTA MAYOR'S CONFERENCE: That the State Legislature consider amending the State Alcohol Local Option Laws to allow Municipalities greater flexibility in dealing with their local alcohol related problems.

Community concern with the local option law has, perhaps, been best expressed by one community opinion which reads, in part:

> Our City Council has taken full and serious consideration

of the use and abuse of alcoholic beverages in our community. After reviewing our situation last fall we signed into effect a city ordinance which limited importation of alcoholic beverages to our city. This ordinance has worked very well for us. We feel it has been a positive step in the right direction. The ordinance has not stopped the abuse of alcohol, but it has remarkably slowed it down. After careful research of the alcohol abuse problem in our community we decided that all the state and federal programs, bits of legislations and community health programs which are available to village community's to "help us with our alcohol abuse problems" simply do not meet our needs. They are not good enough for us.

We needed to make some kind of a stand and enforce our own city ordinance to take care of our own "problems," in our own way, to meet the needs of our people at that particular point in time. And this is what we did.

Legal complications have sprung up as we continue to enforce our ordinance. The worst of these, and the most disappointing is that outside of...City boundaries our ordinance means nothing. We do not have the legal support of the state to penalize air charters for any illegal cargo they may carry to our village which exceeds limits as stated in the ordinance.

This is where our "alcohol problems" persist. We have written letters asking the local air charters to help us in our alcohol control endeavors. A few have, a few have not. For those who continue to bring in the illegal cargo we can do nothing against them. We have even been told our ordinance has no power over the pilot and his air charter who land within municipal boundaries with any kind of cargo. This does not seem right or fair. We cannot get the state support that we would like when we are trying to do something that we feel is helping our community best.

Now Legal Services has informed us of Senate Bill #65 which was signed June 19, 1981 and "allows each village in the state to begin the process of holding local option elections to do something on a local level about alcohol use and abuse." In order for us to get the legal support of the state we would need to adopt one of the four local options as stated in the senate bill.

After reviewing the four options by the City Council and the Village Public Safety Officer we feel that the state's new Senate Bill is not good enough for us. It does not meet our needs. Most of all, it definitely is not a "step in the right direction," for us. Any of the four options would do more harm than good.

Still we look for state support of our local ordinance, and still Legal Services replies that in order to create some "real" action concerning alcohol control in our village

we should promptly adopt one of the four local options. Our city ordinance, no matter how insignificant it may seem to the number of agencies that attack its strength, it fits our needs better than any alcohol control legislation ever created. As far as we can determine, the rate at which we as a city council are taking control of the importation of alcohol is the best we can do for ourselves right now. The very best. Any positive change it creates should be exemplary to the state legal systems. We would hope that if other villages would adopt an ordinance such as ours that they would be successful.

Our main complaint is that our ordinance does not have full legal support and recognition by the state law makers. We are hurting in that regard. As we see it, there needs to be more local alternatives or options than the four presented by the state. The unusual part of Senate Bill #65 is that it states that its use is for villages. But we say we can't use it! Who can? We need more options than only four. We, as "villagers" should be the ones making stipulations, comments and concerns about any bill made for villages. Nobody consulted us. Here in...we never heard of Senate Bill #65, we were never brought together in a group to air our thought on the issue. The state had never invited us to make decisions concerning our own welfare in this bill. Our village members were never consulted.

In order to draw up better State alcohol control laws we are seeking out Mental Health and Alcohol Treatment centers throughout the area as well as villages who may have ordinances such as ours.

We wrote up this ordinance on our own. It has worked well for us. We did it for ourselves and the safety of our people. We are upset by Senate Bill #65. We could never use it. Our village has had an alcohol abuse problem for many years. To vote it completely dry with no importation would be devastating. We believe in freedom of choice by our people. Very few people would petition the city completely dry.

To even consider the other options of liquor license put us in shock. A liquor license?! Hasn't anyone seen the trauma the X liquor store has caused for itself and the surrounding villages? How many lives have been lost by people on their way to or coming from the Y liquor store? Has anyone got any statistics? A liquor license for (us)? That's not the kind of alcohol control we need. All four options would not be feasible for us, or for many villages. We are looking for support from others interested in creating more alternatives or more options than just the four.

To limit options or alternatives concerning alcohol control is wrong. The alcohol abuse problem is different for each village. We are saying that each village should be able

to create an ordinance on alcohol control that best fits their village needs and be able to have state legal support as well.

These eloquently stated positions re-assert many villages' need to do more than "select an option"; they feed the need to design their own village-specific solutions, appropriate to the residents and the problems as they define them.

X. Village Control of Alcohol

Alcohol and its resulting behavioral problems and tragedies are viewed by many villagers and agencies as epidemic; the village and agency response is to attempt to deal with it directly, immediately, and forcefully, as they would respond to any other epidemic. This perspective is supported by the perceived relationship between the presence and consumption of alcohol and the causes for rising mortality rates. In one village, for example, residents could recall only one death from natural causes in the previous ten years (since the opening of local package liquor store), although there had been a large number of deaths due to alcohol-related suicides, homicides, shootings, and accidents. In villagers' calculations of loss, they also include those whose physical or psychological health and family well-being were and remain seriously damaged by their own alcohol-related behaviors and/or the behaviors of others. It is important to note, however, that villagers do not assess changes in rates, as do agencies, but view these losses as personal, family, community, and cultural tragedies.

In order to reduce these tragedies, communities use a variety of means to control what they see as the problem -- alcohol as a dangerous substance. Rather than controlling, through punishment after the fact, the individual who misuses alcohol, they attempt to control, even prohibit, all individuals' access to alcohol. They do this by ordinances, by enforcement, by fines, by hiring police, by voting a local option, and so on.

A. Local Ordinances

Many of the communities which have adopted a local option have also adopted, by village or city council action, a set of implementing regulations to accomplish the same objectives through explicit rules and fines, locally applied. These regulations do not derive from the local option law, but the

threat of using the law and the trooper gives the regulations far greater weight. On occasion, the trooper enters this game, pretends to enforce local regulations, but with the intent of really enforcing the next offense. This is a negotiated interface between local regulation and state law and a negotiated order of law enforcement, where all the players contribute to making the awkward formal system work in support of community objectives. When individuals challenge this "game" on the basis of their legal and civil rights, they can easily win, but not as a collectivity; their actions do not constitute a serious challenge to the community ethic. Challengers must either overturn the political direction of the community or finally bow to the increasing peer pressure which will be applied.

Many of these powers, such as ordinance-making and local option, derive directly from and rely heavily upon state authority. Others derive from traditional village authority, IRA powers, and unlegitimated individual and group action. Some are complementary to the local option law and others operate totally independently of the law. In the aggregate, however, their use attests to the seriousness with which communities regard the alcohol problems and their desire to reduce the problem by whatever means prove effective.

The roots of village control over alcohol date from the introduction of alcohol. For example, in the past elders would put an intoxicated person into the steam bath in order to "get the devil out of them." In other communities, "in the old days we would tie up the drinker and the next day they would feel sorry for what they did." However, alcohol began to create too many problems too rapidly for traditional village control methods to respond effectively. In addition, western systems rapidly removed the ability of traditional authorities and methods to exercise control, requiring instead uniformity with and reliance on external government.

The decline of the local formal and informal control methods and the rise

of non-local formal methods has not achieved any greater success at reducing the alcohol epidemic. Each system has failed, but for similar reasons, including lack of village consensus, conflict between western and traditional values as expressed in legal systems, conflict between the legal rights of the individual and the legal rights of the community, weak and/or uncertain penalties, poorly drafted laws, legal and physical challenge of enforcement procedures and authority, and uncertain enforcement effort over time.

For example, one community attempted to limit importation to a specific number of bottles by city ordinance, to be enforced by the VPSO and city police. Drinking residents immediately questioned what was meant by "bottle" (e.g., a pint, a fifth, a quart, a magnum?); they also claimed that they could import into the community the maximum number of bottles multiplied by the number of persons for whom they had shopped. This resulted in the importation of cases of alcohol, with resulting dismay and disillusionment among law enforcement personnel and the council which had drafted, amended, and re-amended the ordinance to keep pace with the challenges. In addition, since the penalty for violating the ordinance was only loss of the alcohol (a monetary loss only), the seriousness of the intent of the ordinance was not conveyed. The ordinance lost its "steam" relatively rapidly and the community was then compelled to consider the local option law.

The local informal and formal systems often allow for far greater extralegal intrusion into the lives of residents than does the external formal system, because the formal system is complicated by a complex balance between the abstract rights of the community and those of the individual. In addition, the formal system is greatly encumbered by formal standards and procedures which comprise "due process." The formal system binds the actions of citizens and officials to these standards and procedures, such as those governing what

constitutes a lawful statute, how individual rights are protected, what constitutes admissable evidence, who may judge another, and so on.

As a result, the penalty attached to violations is far less certain in the formal system; the greater the uncertainty of penalty, the weaker the force of law. The informal system, requiring less stringent standards of action and proof, is considerably more certain in its penalties and, therefore, likely to constitute a deterrent. However, the penalty, while it may be severe, is less likely than the formal system to cause long-term problems for the offender because the offender is seldom removed from the community, pays his penalty under the protective eyes of the entire community, is welcome in the community during and following the penalty period, and has no permanent record.

On the other hand, if the governed do not consent to the power of local authority, local laws have no enforcement capacity and are therefore not credible. It is then that local authority turns to the power of the state to make the law more credible. In doing so, local authorities become bound to the self-imposed limitations of western law as well as dependent on uncertain law enforcement and judicial support.

Communities evince a great deal of ingenuity and concerted effort in enforcing greater control over access to alcohol, whether under their local ordinances or through a local option. How they enforce either or both forms of control is predicated less on which form of control is the basis of their action than their perception that they actually have the power which is being exercised. In few instances is the local option law treated as a routine and self-executing community power; in most instances, through incomplete knowledge of the limits of that law or through lack of confidence in its provisions or the state services which support it, communities devise their own understanding of the purpose, content, methods, and procedures of the law and invent their own modifications to make the law more appropriate to desired community ends and

existing community organization.

The creativity exhibited in the establishment and enforcement of local ordinances and/or the local opton law reflects the intensity of their concern and resolve around the alcohol issue. That creativity takes many forms, some of which are highlighted below:

— one new-elected village council, during the period in which it was reviewing existing ordinances, simultaneously circulated a contract to be signed by all residents; this contract bound the signatories to abide by and individually support the council actions which had not yet been enacted. In effect, the signature to the contract indicated individual assent to the authority of the council and consent to its rules for conduct. Thus, a person not only would be in jeapordy of violating a communitywide rule but violating a freely-adopted contract. How "free" the adopton was, due to peer pressure, would, of course, be open to question.

-- some communities held meetings in which they adopted their ordinances by consensus, to show that the authority exercised by council was directly derived from the entire community; each member was bound, not to the council, but to the community, to not only abide by the law but to enforce it.

-- Some communities established automatic fines for various types and numbers of offenses; one community assessed:

1) $25.00 for "drinking"
2) $100.00 for "smuggling" (importation) plus $25.00 for presumed consumption of smuggled alcohol
3) call state troopers for giving alcohol to minors, notify the parents, and fine the minors
4) if cash fines could not be paid, council would accept a short-term promissory note; failure to repay the note would result in a higher, more severe cash penalty or other penalty
5) repeated violators who ignored the imposed fines could be reported to the state troopers
6) repeated violators exiled for specific time periods

-- communities notified air carriers, retailers, law enforcement agencies, and others of new restrictions asking for compliance

-- communities broadcast over regional radio and television when they imposed new rules

-- communities required air charter services to buzz the village before landing on the local strip to be sure that no alcohol was delivered locally

— communities create delays and obstacles on the airstrip when air carriers violate community desires, require them to return their passengers and cargo, thus creating a cash disincentive to continue violations

— communities select village members to attend all aircraft, boat, and snowmachine arrivals
-- communities check all baggage and the persons of drunk passengers at disembarkation, destroy or return to embarkation point all alcohol found; the cost to violator is the money already spent on the purchase of the alcohol and travel
-- guard all aircraft containing alcohol until they depart
-- "chase" back onto plane anyone who refuses to either destroy or return all imported alcohol
— if someone escapes detection of importation, some communities will gather a large delegation, go into that person's house, conduct an illegal search and seizure, conduct a meeting, and fine the violator.

B. Behavior Modification and Penalties

The methods and effectiveness of local formal and informal social controls are quite varied. In some villages, a person who does not conform is talked about increasingly until that person's behavior changes. In these instances, village residents are very concerned about being caught or seen doing something wrong. If the indirect means (that is, being talked "about") does not work, a person may be talked to directly by an elder or group of elders regarding his/her behavior. A person might even be required to explain his/her actions to the council. The attempt to blend these traditional methods with western law does not appear to work too successfully. For example, various attempts have been made to use "shame" as a penalty by western judicial systems; an example would be sending a person to his home village with a penalty of doing community work. Councils and other residents, particularly relatives, tend not to want to embarrass the guilty party nor others in such a formal way.

Continued non-conformity can result in expelling the person from the community for a prescribed time, a traditional practice in protecting communities but with lesser cost than capital punishment. Exile of violators of community laws is the most extreme form of punishment for a community and the individual, because it deprives the community of a family member and deprives the individual of the only support system he may have. Because villages seldom have the capa-

city to control alcohol-related violence and violators continue to be returned by the judicial and corrections systems, villages can assure themselves of non-recurrence only by exile. In addition, exile is often necessary because there is no way for the individual to provide restitution for dangerous or deadly actions.

Villages often conclude that exile is the result partly of the actions of the violators, partly of the disjuncture between community and state legal systems, and partly of the inability of the legal, judicial, and corrections systems to ensure real penalties. As one respondent noted,

> "We did what we could with fines, until we finally had to tell him (the offender) to get out or we would call the troopers. We called the trooper and he said there was nothing he could do. So we end up stuck with that person after all that effort. That ticks us off. Then we have to chase that person out, regardless of all the family obligations he may have. If we don't back up our ordinances with prosecutions, others will not obey, so we have to do it. If we show toughness, then the others will be scared. We kicked out a lot of people. Two are out now with one year banishments. The courts and the (district) attorneys told us there was nothing they could do to help us. There are lots of problems in taking the law into our own hands, to punish our people ourselves. We do have lots of alternatives. If someone doesn't accept banishment, we can still cut off all community services to him. That's worked OK."

Expulsion can be accomplished without the consent of the individual. For example, in one village, a white female teacher was known to have brought alcohol into a community whicy by tradition did not allow alcohol. The teacher was within her legal rights to possess alcohol. A rumor was spread that not only did she have the alcohol, but she was also providing young men with sexual favors. The council then petitioned her employers not to allow her to return the following year. She did not. This process has an impact not only on the individual violator but also on other "outsiders" residing in the community or entering after the event.

Exile commonly results from a series of failed attempts (e.g., increasingly

large fines) to alter an individual's behavior. Exile may appear as a standard ordinance, giving the council the power to "throw people out of the village," a power intended to be used primarily against non-residents. (The favoring of residents over non-residents appears in several forms; for example, one ordinance calls for residents to be fined $50 on their first offense and $100 on their second offense, whereas non-residents were to be fined $100 on their first offense.)

Villages desire penalties that are sufficiently significant to modify the behaviors of individuals. However, it is important to remember that villages do not wish the penalties to punish the individuals for past behav-iors but to deter them from violating the agreed-to controls on alcohol. The objective, after all, is not punishment through fines, imprisonment, or banishment, but the elimination of alcohol and alcohol-related behaviors from the community. There does not appear to be a pattern of penalty that is predictive of achieving this conformity; this is due, in part, to the lack of a history and tradition of weighted penalties, active enforcement, and successful application of penalties.

Western penalty systems have been imitated by some Alaska communities, particularly those that had had long and continuous experience with territorial government which relied heavily on the swift application of fines and incarceration. The penalties imposed by local ordinances, village councils, and magistrates include:

— loss of alcohol

— cash fines

— required unpaid service to the council or community

— loss of privilege to use private vehicles

— expulsion from the village

— time in the local jail.

All of these penalties may require the consent of the offender in order to be accomplished. Often, the offender will accept local penalty in order to avoid being tried outside of the community, with the potential costs of enforceable fines, jail time, and having a police record.

These penalties, combined with the implied threat of turning to external law enforcement and judicial systems, often result in modified individual behavior as well as a re-affirmation of community self-governance. As a result of stringent enforcement, some residents assist each other to keep the alcohol, the use, and the related behaviors hidden, a fair approximation of the outcomes desired by community members when they enact new law and supported new enforcement.

It must be noted however that too stringent enforcement and penalty, while reducing the alcohol-related problems and mortality in the village, may also simply externalize the problems to the hub; similarly, the numbers of persons who die just outside the village boundaries or in transit between the village and the hub may markedly increase. Finally, stringent enforcement may encourage an increase in the production and consumption of homebrew.

Thus, villages seem less desirous of punishment for its own sake than to alter the boundaries of interpersonal behaviors. Exile is intended as a learning experience (e.g., learning what is in the community mind) and a boundary-setting experience, more than a permanent rejection of the offender. Even the violation of the offender's civil rights is seen as a positive act of caring for and intervention on behalf of the individual.

Non-local enforcement of laws tends to be negative, but to leave the values and minds of the offenders alone. Local enforcement tends to be positive and supportive, but to demand conformity of thinking and acting.

Communities which exile their members for repeated violation of accepted norms of behaviors may not be punishing these members; they may be more

interested in awakening these members' awareness of community values and protecting the community and these members during the rehabilitation period. They would not be pleased to see exiled members in jail, with a criminal record, or not eventually returning to contribute to community life. In other words, community actions are never self-evident in their purposes, even though their methods appear similar to what is familiar and routine elsewhere.

The many informal methods of local social control (e.g., half the village meeting the boat, 20 people coming into the house) may also be considered caring acts; that is, it may not require such a show of numbers to enforce a community mandate but to show that a large enough number of persons is willing to embarrass a resident or interfere with his life for both his benefit and that of the community.

For example, many villagers reside in hub communities. When they see a boat leaving for the home village with quantities of alcohol, they either phone ahead or notify the next plane that is enroute to the village. Word usually arrives before the alcohol. One respondent asked, "Do you know how embarrassing it is to come around the bend and find half the village there on the beach waiting for you in the boat? Then they pour the bottles out. You don't need any more punishment than that."

Thus, the most effective and immediate law enforcement may result from the collective efforts of some or all community members, reducing the physical and pyschological risk to each as an individual, reinforcing the community standards to recalcitrant individuals, multiplying the number of reporters and enforcers, and building a greater sense of community self-control. This form also runs the highest risk of excesses, potentially violating the constitutional rights of individuals on behalf of the community-at-large.

The purpose, then, of group action to embarrass or intervene is to convert

the offender, to get that person to change his/her perceptions of the responsibilities accompanying village membership. It is understandable that the worst offenders can become the most stringent enforcers. There is no mechanism in the formal system to achieve the same end.

C. Methods of Alcohol Control

While the Alaska local option law is a new law, it is an old solution to an old problem. Almost all of the solutions that are available, formally or informally, legally or illegally, have been tried elsewhere earlier. The solutions imported from outside the communities do not seem markedly more successful than those the communities devise for themselves; the aspects which hamper both sets of control have to do less with their form than with whether or not they have properly identified the problem, addressed the problem, and received uniform and aggressive support.

Villages appear to be highly creative in their control procedures, as noted earlier in this report. Several communities, following the initiative of the local option law, placed a fifth option before voters which included a ban on sales, importation and possession of alcohol. In at least one commuity the electorate passed the total prohibition. Although such an election is unconstitutional and invalid, it does demonstrate the neo-prohibitionist intent among these rural Alaskan residents.

It is clear that many villagers are enforcing their intent, not the letter of the local option and other laws; that is, when the legal means are insufficient to the ends, the villages operate as if their methods were not so constrained. For example, one city council passes an emergency ordinance banning the sale and importation of alcohol. They were informed that the ordinance was invalid; they decided to enforce it anyway. It was explained to another council that they could not enforce a ban against alcohol possession

without risk of a damage suit; the mayor indicated he was willing to risk the suit. Other councils, when informed that their bans of possession, their search procedures, and so on were unconstitutional altered their formal actions. However, the response of many communities was "What do you mean we can't? We'll do what-ever is necessary, regardless."

These actions include:

-- universal search of all luggage, cargo, and passengers
-- X-ray of all baggage
-- banning all possession and consumption
-- illegal search
-- banning the manufacture of homebrew
-- seizing all transport vehicles
-- selective searches of individuals
-- selective blacklisting of individuals from ability to purchase
-- selective blacklisting of individuals who are <u>required</u> to be searched
-- banning only certain alcoholic substances (beer, wine, spirits, by percent of alcohol)
-- limiting amounts that may be imported, by person, by time period
-- exempting bans during specific purposes (e.g., fairs, potlatches, holidays, celebrations, birthdays) and periods (e.g., weekends).

Actions <u>suggested</u> by <u>but</u> <u>not</u> <u>adopted</u> by villages include the issuance of a revocable drinking license, issued to individuals and limited to specific substances or amounts. These actions occur both in conjunction with and separate from the adoption of a local option. It is unclear whether councils and communities recognize that these actions are not authorized by nor derive from the local option law; it is also unclear whether these extra-legal and illegal actions unduly disturb these control agents.

Western law allows for the control of access to alcohol (no sale or no sale/ no importation) and it allows for punishment of criminal behaviors performed while intoxicated. What Western law appears les able to do is to allow access to alcohol on a discriminatory basis nor can it intervene in behavior from a preventive standpoint. That is to say, Western law could not "black list" cer-

tain community residents from having alcohol while allowing others to have it. Nor can Western law stop an individual from drinking more than a certain volume of alcohol on the basis that if he/she drank more, he/she would abuse his/her children.

Formal systems of law cannot be this flexible or discriminatory. The informal systems, which cannot be legislated, are the only means of ensuring controls over both the substance and the individual consumer. Community consensus and community action in response to the consensus establishes this informal system.

What appears to be of greater concern to communities than the noncongruence of western and local law and law enforcement methods is the relative success of these control efforts. This is measured by significant changes in perceived alcohol-related problems.

One measure of the success of local rules on alcohol importation or use/possession is a total absence of alcohol and its use in the community. Few, if any, communities have achieved this level of success; no community touched by this study reported such success. All communities reported that drinking was still going on, which disturbs some residents more than others, depending on their level and type of concern; however, since the majority of community members either hoped or thought that, following rule-making, there would be no drinking at all, there is often considerable disappointment at the failures -- lack of successful voluntary adherence to local rule, lack of successful enforcement tools and methods, and continuing drinking (at some level) in the community. On the other hand, since much of the community concern is with alcohol-related public behaviors and violence rather than with private drinking, communities see their option as "sort of working"; they "sort of overlook" the remaining drinking as long as behaviors do not overstep other residents' standards, rights, or safety. This creates a new synthesis, wherein law is not stringently enforced and behaviors are kept within tolerable bounds.

D. Selective Enforcement

Some simple statutes, such as the local option law, are by their nature both rigid and exact. They do not lend themselves to the flexibility of methods and selectivity of enforcement desired by many rural residents. Villages express a desire for the enforcement of local laws to be selective -- by person, practice, and season. For example, many villages will identify those persons whose access to and use of alcohol should be absolutely banned; conversely they will identify those persons whose private use is non-problematic. Selectivity may be used to control or punish "outsiders", seasonal visitors (such as miners, fishermen, firefighters, construction workers), and "bad people". Villages will suggest that, even under option #4, drinking in private and importing small quantities should not be banned.

Similarly, they suggest that there are periods of the year when alcohol control measures should be either more stringently enforced and other periods when enforcement should be relaxed. This selectivity, as it actually occurs, is not legally sanctioned under the local option law; thus, its application to a particular individual or time or substance may be construed as arbitrary.

On the other hand, in most communities, the priorities of law enforcement officials are dictated by councils and these constantly change as the community assesses its changing pattern of problems. This power to shape the enforcement effort is as significant a tool of local self-control as is the ability to manipulate or interpret the meaning of laws. In fact, selective enforcement was available earlier, when communities had the power to pass emergency ordinances which could be targeted to control persons, practices, and seasons.

One of the principal instruments of selective enforcement is the VPSO who receives his directions directly from the council. For the VPSO to act without this direction would put him/her in serious jeopardy. In different villages, the VPSO is told to search all or only some cargo and luggage, to interrupt only

bulk importation of alcohol, to selectively search only certain individuals, to perform a variety of illegal searches and seizures, and to report only certain persons to the trooper for criminal investigation and prosecution. For example, one community was interested in voting for "no sale, no importation" primarily to stop serious bootlegging. One resident said that they would have to bring in a jumbo aircraft to take away everyone who imports.

Selective enforcement by season places the VPSO in the greatest difficulty because, during those periods, the law is violated in a visible and wholesale fashion. During this period, the VPSO will be either sent out of the village, participate in the violation, or simply be stymied because he lacks council and community support.

Alcohol control is not the only area of selective enforcement by the VPSO. Other examples of selective enforcement by VPSOs include fish and game regulations. Alcohol and fish and game regulations are the hardest laws for VPSOs to enforce, because of family and cultural obligations and traditions.

The demand for selective enforcement is often difficult for those VPSOs who feel that they are true police officers, responsible to the state for uniform application of laws. It is also difficult for those citizens who voted for "no sale, no importation" and really meant that there would be absolutely no alcohol tolerated in the community. It is expectable that, over time, strict enforcement of any law will wax and wane, depending on community feeling. For example, village elders are likely to demand stringent and uniform application over time. Others, whose vote was in reaction to a serious tragic event, will lose interest over time. Selective enforcement is likely to be supported by younger people, including the VPSO who is likely to be a member of this peer group.

E. Symbolic Rules and Self-Indications

It is not possible to conclude from an overwhelming vote in favor of banning the sale and importation of alcohol that the voters actually intend to prohibit all access to or use of alcohol. Many voters are willing to support such an option because they see that the option will assist the community in managing its major problem; however, they do not see their own use of alcohol as part of that problem. For example, in one village, the city council members partied for a week, then met formally to levy a fine against itself for having violated the law. In this sense, the village is gesturing to itself, particularly to some of its most abusive drinkers and recalcitrant, lawless members, that it intends to control behavior. It is also gesturing to the village youth that drinking is a bad activity. This use of symbolic gesture gains significance when one recalls that the passage of the local option law and the adoption of a community option does not result in any increase in enforcement and judicial resources or efforts.

Some communities regularly indicate to themselves that they continue to support these community controls. In one village, for example, the residents regularly sign a petition re-affirming their individual and collective support for council ordinance banning alcohol. This re-affirmation indicates not only support of the ban, but the individual assenting to and sanctioning the authority of the community and giving control to the community. By assenting to this "contract", the individual is self-imposing a law and is therefore not having the will of the majority imposed on him/her. Admittedly, some residents place their names on the petition under the weight of peer pressure; on the other hand, when they are accused of having violated the law, the indictment is not that they have violated the will of the majority but have violated a freely-entered contract with the community.

F. Real and Certain Enforcement and Penalty

A significant problem for village law in transitional communities (that is, communities which no longer exercise traditional authority and which lack sufficient law enforcement and judicial control) is making the violators of laws see the resulting penalties as real and certain. Penalties appear real and certain if 1) law enforcement personnel are readily at hand, 2) judicial functions are readily at hand, and 3) conviction and penalty are not easily avoided. In those situations where local law enforcement is absent, where communications, transportation, and logistics delay trooper response, where evidence is easily lost or mishandled, where testimony long after the fact is difficult to secure, where witnesses must leave their home communities to testify, where judicial personnel are unfamiliar with village conditions, history, organization, and persons, and where detention or other punishment cannot be assured in the village, penalties for violations are not seen as real. Even in the instances of successful arrest, prosecution, and time served in jail, the home community may not view the outcome as successful, particularly if the community views the time served as either insufficient or excessive (compared to the offense, the situation of the offender or his family, or the standards of the community) or if the community feels that the return of the offender is threatening. Even though the troopers tend to be in fairly uniform support of the formal and informal village methods to control alcohol, they cannot shorten the time between report and conviction in the formal external system. Each step in that system is time consuming and energy-consuming, with no certitude of success.

Conn (8, p. 23) points out that "inadequate trooper response...destroys the credibility of village law within its own realm. That credibility is, in part, state determined." Inadequate trooper response does not necessarily mean that the troopers have failed to meet their obligations but that there is a limited number of troopers scattered throughout the Bush areas, travel is complicated,

travel time is lengthy, response times are often slow, troopers often hesitate to come to the village on minor matters or to intervene in developing problems, and troopers often appear only following a serious act of violence.

As a consequence, villages are often left to their own devices to enforce their laws and intentions. Those communities which use traditional and informal means to control alcohol use are bound by less rigorous (and often extralegal) means and standards for identifying violators, trying and convicting violators, and fining or otherwise punishing them. There is little uncertainty about conviction and punishment under these circumstances. For example, while bootlegging may remain invisible to a non-local judge basing his understanding on admissable testimony and evidence only, bootlegging in the village is a very visible activity.

State troopers, city police, VPSOs, magistrates, and judges are bound by more stringent legal standards and means -- civil rights, the handling of evidence, "probable cause", and so on. The development of legal evidence often requires a great deal of time and effort by both the VPSO and the trooper. By the time the trial occurs, the village is no longer interested in the crime or the criminal, because the final result is uncertain, delayed, and of little utility. That is, the community is interested in modifying the behavior of its members; delayed and uncertain punishment is not perceived to modify behavior effectively. It results in only retributive justice, a product of little use to a community which values its members.

Some village residents suggest that penalties would be more "real" if trials were held in the village and penalties served in the close and unpleasant confines of village detention facilities and/or in VPSO supervised community service work. They suggest the most rigorous pursuit and punishment of cases of organized bootlegging and other alcohol-related felonies, and more personalized

penalties for misdemeanants. The exact penalty, they suggest, should be stringent enough to result in positive behaviors, but also related to the life situation of the offender; "what purpose," they ask, "is served by placing an unemployed person in a warm jail cell for 15 days?" Villages are more concerned that the penalty fit the individual than that the penalty fit the crime.

Penalties become "real" only when residents report on one another to the council or to law enforcement personnel, when trial and conviction are fairly certain, when penalties are perceived as neither too weak nor too stringent to alter behavior, and when the enforcement of the penalty is also seen as uncertain.

Enforcing the law in the formal system introduces a component which is relatively new in village life -- reporting of a resident's behavior to an external authority. This is distinctly different from the traditional forms of social control through visiting, talking, and shaming. Reporting is, most commonly, an individual act that is not shared with the rest of the village. An individual reports someone to a VPSO or trooper and testifies in writing or in public.

The more inter-related the village and its members, the stronger will be the feelings of guilt about reporting on the unlawful behaviors of other members. The cost to the reporting member can be heavier than the penalty applied to the lawbreaking member; these costs include guilt about penalty itself, concern that the penalty (such as jail, money, or vehicle loss) will damage the offender or his family, violation of family ties, violation of trust, individuation within the community, fear of retaliation. It is difficult for informers to remain anonymous since:

1) criminal defendants have the right to confront witnesses against them
2) background investigation must be accomplished to determine the likely veracity of witnesses supporting a search warrant
3) the informer, to have such vital knowledge, may have been an active

participant in the violation.

It appears that anonymity of reporting can be maintained only if 1) the accused freely admits his/her violation, 2) the prosecution can present sufficient alternative evidence, 3) there can be proved a danger to the informer, 4) the informer was not a witness but only a "tipster", or 5) the informer was only one of several witnesses. Reporting can be done with greater relative safety and cost if a group (e.g., council, elders, consensus) conducts the reporting and has a voice in suggesting or determining the appropriate penalty. Reporting is enhanced when the residents can report to an internal rather than external agency and when the village can either recommend or effectuate a person-specific penalty.

If residents have little or no say or contribution to assigning the penalty, they hesitate to report for fear that the penalty will be too damaging to the individual or, alternatively, insufficiently protective of the village.

Indeed, Conn (8, p. 23) reports that

> "when villages complained...that offenders returned home to their villages on the next plane after their arrest and before victims returned from hospitals, they communicated a concern about state justice which not only reflected their perception of its activity but one that suggested that the offender's rapid return affected ongoing collaboration [between the village and state justice systems]. Defendants had been released on their own recognizance because each enjoyed a constitutional right to bail. They may have returned with restrictions placed on drinking and use of firearms, but these restrictions were not communicated. Even when the chief justice issued a mamorandum asking that restrictions be explained, field operatives were uncertain as to whom to communicate this information. Villagers were uncertain as to who was to react to this information on behalf of the State."

Villagers reported that, on many occasions, the offender returned home earlier than the witnesses who had gone to court to testify.

Many villagers report that judges are excessively lenient with offenders, often giving them suspended sentences with minimal conditions and sending them

to their home communities without fine or jail time. One judge was even reported to be lenient with bootleggers, under the assumption that the villagers wanted bootlegging. Villagers view that, in these court actions, no action was taken.

In an attempt to address the problem of courts returning an offender in a shorter period of time than the community wanted or was willing to tolerate, councils and others will write directly to the courts or through the troopers, indicating their level of concern and their desires. On occasion, judges have been reported as making exile from the community for a specified period of time a condition of probation.

While the villages understand some of the constraints on the western system, they find that it continues to place both villagers and offenders at increased risk. The villagers are placed at greater risk by having the offender returned home without penalty (thus encouraged in their negative behaviors) and angry enough to seek retaliation on reporters and witnesses. Similarly, villages without effective police powers or agents can provide little protection for the drinkers themselves; that is, these villages are not sheltered environments for the drinkers, either. They can protect neither the offender from his own actions nor those of others.

Given this lack of protection, villages find themselves compelled to deal with the negative effects of drinking such as loss of life, fear among elders, neglect and abuse of women and children, and failure of village officials to perform adequately in their community, council, or corporate roles. The communities turn to either formal or informal, legitimate or illegitimate authority and means to protect themselves.

There is a very long history of Alaska Native disappointment with law enforcement, prosecution, and judicial systems in their perceived failure to actively

pursue alcohol-related violations. This has led to growing disrespect and disregard for the law and its agents. Villages' belief in the reality of external enforcement of the local option law occurred when a village reported and the troopers arrested a trooper who allegedly violated that law. The successful prosecution of that trooper enhanced the villages' feeling that the State was serious about this law and that internal power was more effective when it was tied to external power. Their feelings of some magical new control and effectiveness were seriously dampened when the penalty assigned to that trooper was perceived as insignificant.

The short-term costs associated with failure to arrest, prosecute, convict, and punish violators of the local option law include erosion of community morale and self-confidence and continuation of alcohol use and related-problems. The long-term costs are, potentially, as or more severe; if this high-profile law were ignored without penalty, it is feared that young people will follow bad role models in lawless and irresponsible patterns of behavior. Thus, villages feel, short-term positive outcomes, unless supported by long-term correction of system-wide deficiencies in the enforcement and judicial systems, are an insufficient and misleading measure of long-term success.

Communities find that enforcement of the local option law is more complicated and difficult than is the passage of this law. Some factors which contribute to this difficulty:

- — the unworked out relationships among traditional informal and formal enforcement methods and the new systems relying on new enforcers (e.g., VPSOs) and external enforcers (e.g., state troopers)
- -- the required level of political, physical, psychological, and technical support for the VPSO from the community, the council, and the state troopers
- -- the reluctance to report violations to the VPSO and/or the trooper, due to family ties, lack of investment in external judicial and corrections systems, the time lag between offense and arrest, and uncertainty in the minds of the reporters about whether their reporting is helping or damaging the offender

-- the variable factor of the white residents in villages, some of whom support such controls, some of whom reject not only the ordinances but the authority of traditional village councils.

G. Enforcement Personnel

The presence of law enforcement is absolutely critical to successful implementation of the local option law. Such law enforcement can be in the form of state troopers, city police, constables, VPSOs, council presidents or chiefs, entire councils, community committees, or the community as a whole. Each of these has its own costs and benefits. In general, the more external the system, the more fear is created of serious penalties; on the other hand, the more external the system, the more likely that it is seen as too distant or too self-constrained (by rules of evidence, by legal charge) to be an effective deterrent.

The more local the law enforcement, the more pressure can be brought to bear, by political or illegitimate means, to deter real law enforcement. The more that local systems delegate the enforcement authority and responsibility on specific individuals (e.g., mayor, VPSO), the more vulnerable these individuals become to isolation, personal risk, and abandonment of their charge. The low pay, low prestige, long hours, and other personal costs of local formal law enforcement encourage these feelings of isolation.

These individuals are vulnerable to intense pressures, unless they are publicly, physically, and psychologically well-supported by other community members. For example, in one instance, a young council president was ostracized by some community members and had important personal property destroyed by anonymous vandals. He persisted because he:

1) saw that the future of his village culture rested with the young
2) the young were damaged by their own alcohol use and the practices of their peers and parents
3) it was incumbent on him to save the culture by protecting

the young through vigorous enforcement of the local option law.

The local option law can be an effective statute when the community, its VPSO, and the trooper work together, to report, collect and maintain evidence, conduct investigations, monitor the actions of the alleged violator not only in the home village but elsewhere, establish probable cause for search and arrest, testify in court, and so on. In the attempt to control the flow of alcohol, the community cannot enforce intermittently, on a selective case-by-case basis only. Enforcement of the local option law does not rely on the individual reporting of a violation, but on the constant vigilance and determination of residents and the VPSO to intercept illegal importation. That constancy is undermined the greater the distance in time from the tragic events which precipitated the vote, the more unwieldy and ineffective prosecution appears, and the more the younger people successfully challenge, ignore, or forget the law and the authority of the community.

Even the VPSO will hesitate to provide constant effort in enforcement of the local option, particularly the "less serious" infractions such as importing a small amount for personal and private use. This hesitancy is due to:

— uncertain council or community interest and support
-- problems in obtaining and maintaining evidence
-- inability to engage in illegal search and seizure
-- heavy paperwork burdens
-- pressure, even threats, from friends and relatives
-- other job priorities
-- their own violations of alcohol restrictions
-- discontent with the legal process and procedures
-- successful challenge by offenders who understand and use their rights
-- the effort required to intercept alcohol through its several access routes, transportation methods, and schedules, particularly in communities connected by road to retailing or exporting communities.

H. The "Problem" of Legal Requirements

The effectiveness of the local option law is constrained by normal legal and police procedures, such as establishing probable cause, issuing warrants, gathering and maintaining evidence, and so on. Early in the local option law implementation process, there was a lack of civil rights knowledge and education among local law enforcement personnel as well as residents. One of the consequences of this lack of knowledge was the development of very effective search methods applied to persons and cargo entering the community. As civil rights education improved, searches became more restricted, less enthusiastic, and less effective, resulting in reduced search effort and increased importation. Some communities interpreted this change as reduced VPSO effort rather than as a response to limited powers, methods, and success. It also appeared that VPSOs were selectively enforcing the law on the easiest targets -- drunks, rather than on the more covert and cautious bootleggers.

The stringent requirement for the proper handling of evidence coupled with many residents' reluctance to testify and the violators' knowledge of civil rights often result in an inability to assure conviction and penalty. This is particularly true for those cases which involve chronic violators who have had extensive experience with the courts, who refuse to have their cases heard by local magistrates, who refuse to plead guilty to the charge, and who demand legal counsel. Thus, those who are most likely to be successfully prosecuted under the law are those who:

-- are not chronic or serious violators
-- have little prior experience with law enforcement
-- freely admit their guilt to the charge
-- freely accept the penalty imposed by the magistrate or council.

Since the law is least successful in curbing the behaviors of the most recalcitrant and dangerous offenders (that is, specifically those that the com-

munity wished to control through a local option), some residents view the product of this process as neither appropriate and equal justice nor meeting community objectives.

Some of the evidence which had been presented against violators in the early stages of local option law implementation was the product of illegal search and seizure. While some was gathered by VPSOs new to the legal system, much was also due to illegal search and seizure by council members and other private citizens. These took the form of establishing illegal roadblocks and searching all private vehicles, searching all airline luggage and cargo, and breaking into private homes where drinking was occurring. Since neither public officials nor private citizens may violate the civil rights of other citizens, the product of these illegal actions may not be admissable evidence in court and those who violated these civil rights are open to legal action, both criminal and civil. In addition, it is possible that law enforcement officials receiving the illegally obtained evidence from private citizens may be accused of complicity in those illegal acts, since it may be construed that these citizens were acting at the direction of law enforcement officials.

One of the pecularities of the local option law is that, as noted earlier in this report, since the most restrictive option is "no sale, no importation", a person who possesses or uses alcohol within the village boundaries may be doing so legally, even though he or she has violated the "no importation" clause. In effect, since the law does not make possession, use, consumption, or drunk-in-public illegal, the ban on importation can be enforced only as the person is transporting the alcohol through the community boundaries; this seems to reward the successful covert importation and importer.

The authors have found few cases of successful prosecution of a violation of the local option law where the possession of alcohol was construed by the court as "circumstantial evidence" that the ban on importation had been violated. It

is primarily those cases in which the violator freely admits his guilt that possession has been successfully equated with illegal importation.

It is not clear to what degree possessing alcohol or appearing intoxicated in public has been used as "probable cause" in seeking a search warrant or making an arrest under the local option law. In an effort to establish "probable cause" to, for example, search luggage, VPSOs and council have tried a variety of means; these include conducting searches on anonymous tips, asking that villagers and others submit to voluntary random searches (with refusal used to indicate probable cause), and other techniques. Since VPSOs and troopers are few in number, some citizens have attempted to make "citizen's arrests" of persons they thought, knew, or perceived were violating the ban on importation, only to discover that the power to make citizen's arrests was limited to direct knowledge of or good reason to believe that a felony was about to take place or was taking place.

Information that would constitute probable cause to believe that a local option law violation is taking place and intervention is warranted transcends the commonsense logic of the average citizen. Knowledge of a fellow resident's drinking history coupled with the fact that the resident was returning from the regional hub could constitute sufficient probable cause for a formal or informal community enforcement response and yet be insufficient and even illegal as perceived by a court.

In order to establish sufficient probable cause to sustain the issuance of a search warrant, courts require some tangible evidence, such as direct witnesses to a person onloading alcohol to a boat or plane, sales receipts for wholesale alcohol purchases, or having quantities of alcohol in plain view. Establishing this evidence in a legally prescribed manner is a slow, tedious, uncertain process which does not produce the immediate results desired by communities. It

generates the village perspective that the courts operate on the side of the individual violator against the welfare of the community.

There is no doubt that many communities were disappointed that they could not use such methods as universal X-ray of all luggage and cargo to stop the flow of alcohol because of constitutional limitations. They were also disappointed that similar constraints applied to airlines and their employees, that is, that these employees are also required to have a reasonable and supportable suspicion that a specific (not universal) search will uncover contraband alcohol and that such a search be free from the instigation or participation of government. Finally, both communities and law enforcement officials express concern that all persons in the chain of alcohol transportation in violation of the local option law do not appear to be equally culpable, that the law may not encompass transporters who deliver alcohol to points and persons just outside village boundaries unless the intent to violate the law can be clearly demonstrated.

Through repeated experiences with law enforcement, village residents have acquired a practical education in civil rights, discovering that 1) the violators were surrounded by many protections and 2) the community and the victims were somewhat less well protected. This education tends to both demoralize residents and their law enforcement agents and encourage a variety of extralegal and illegal controls.

The troopers attempt to ameliorate both the demoralization and the extralegal actions by taking specific actions such as:

1) encouraging local efforts to control access to alcohol
2) encouraging the reporting of violations
3) counselling the community on the limits of their rights and the risks of violating someone else's civil rights
4) trying to intercept the repeated violator at the point of alcohol purchase or while in transit
5) counseling the offender and letting him know that the trooper was watching him and was on the lookout for bootlegging, a serious offense

6) counseling manufacturers of homebrew that they had better avoid selling their product or giving it to minors.

Troopers were reported to support the villages' attempts to control their own affairs and to attempt, within the limits of the law, to support community actions. Where they have been called on complaints about illegal search and seizure, it is reported that they have counselled seriously with those offenders and have, concurrently, leaned heavily on the person importing the alcohol in violation of the local option.

It was suggested by many respondents that the weakest link in the enforcement of the local option law was not the VPSO, the trooper, the citizens, or the council, but the judicial system (e.g., prosecution, trial, conviction, sentencing). It has been noted elsewhere that neither law enforcement nor judicial bodies received additional resources under the local option law; for them, the local option law implementation is merely another task to be accomplished by already overcommitted resources. It has also been reported that many prosecutors and judges are disinterested in local option law misdemeanors.

The vast majority of cases that are made on the local option law are misdemeanors. Thus far, most of the few felony cases have been dismissed on various technicalities. It is, of course, far easier to obtain sufficient evidence and confessions for the successful conviction of misdemeanors than it is for felonies. So far, the role of magistrates in the local option law has been minimal since, in many cases, they function to take voluntary guilty pleas for Class A misdemeanors only and apply appropriate penalties. In more serious or contested cases, an accused person will be arraigned by a magistrate, plead not guilty, go to trial, be assigned a public defender, and there plead no contest. At sentencing, these cases are commonly given ten days in jail and 20-60 hours of community service.

The successful achievement of community expectations under the local option

law requires that the judicial system will apply appropriate penalties as a deterrent to future violations. This places a burden on the judicial system (whether a magistrate or a judge) to find those penalties which both further the objectives of the community and minimize the damage to individuals and families.

Some villages expressed a great fear that a non-local judge would impose a $5000 penalty or a 30-day jail term on a village resident for a violation of the local option law. While observers have suggested that no judge would be likely to impose such a harsh judgement (cutting firewood for the council and other forms of community service are more common), this fear by villagers is difficult to assuage. Other villages expressed a concern that judges were too lenient, returning the violator to the community with a suspended sentence.

What is suggested as more desirable is trial and sentencing by a local judicial body or trial by an external body coupled with sentencing either determined by or recommended by the village council. These practices occur in a number of villages. A problem for councils is acquiring the means to be certain that locally-imposed fines or other penalties are paid. Some villages appear to believe that, if a resident continues to ignore the fines attached to violation of local ordinances, this constitutes grounds for trooper arrest and non-local prosecution; they are often disappointed to discover that troopers can respond only to violations of state and federal law.

XI. Dividing and Deciding on the Local Option Law

The issue of alcohol control in Native villages is as divisive a concern as can be found, because it engages a great range of village factors -- leadership, families, control, religion, economics, power, demographics, ethnicity, consensus, and so on. This chapter will depict some of these complexities to explain why many communities find decisionmaking about alcohol control so easy and others find it so difficult.

In general, the village attributes which are most likely to be predictive of holding a successful local option law are:

- a secure, activist, and strong village or city council
- a council which is not itself typified by abusive use of alcohol
- consolidation of or unanamity among all village power bases
- a population marked by stability, in terms of racial composition, migration, economy, goals, and problem rates
- a community desire and ability to identify problems, set goals, establish priorities, establish solutions, and take action as a community
- other difficult goal-directed actions taken by the community which indicate that the community can exercise self-control.

Some communities appear too divided or demoralized, at present, to organize themselves to utilize any of the options provided under state law. Other communities appear to have such strong and intact traditional purposes and forms of social control that they feel they have no need or less need of importing new external powers and control mechanisms. It appears that those communities that desire greater self-determination over aspects of their quality of life and whose traditional systems no longer suffice (for a variety of reasons) to meet these objectives are the most likely to look to the local option law and other tools to achieve their goals. In other words, the communities that are most

likely to avail themselves of the local option law are those that are in a transition, returning to a healthier, self-controlling state; these may be communities that have experienced a twenty-year decline in quality of life due to the historical factors which have pervaded these villages. Thus, it is suggested that the local option law does not create healthier communities but that healthier communities or communities that are becoming healthier are the ones most attracted to the local option law as an additional support.

It is worth recalling that the inability to develop formal city government is not a good predictor of failure to tackle the alcohol control issue. In many villages, the development of city government was not intended to produce new or consolidated governance, but merely to qualify for state-funded programs and facilities. It is also common for city governments to be plagued by high turnover in council membership, closely contested elections, problems in bookkeeping, and an inability to provide the basic functions, services, and tasks of city government; these problems may be more reflective of problems in dealing with the external source, forms, and requirements of formal governance than of the village's ability to control its daily life. For unincorporated communities, the local option law provides some of what a city government would provide but avoids some of the costs in energy, culture conflicts, and power conflicts inherent in continuous electoral government.

A. Power Conflicts

Perhaps the most basic question in assessing the use of power in a village is, who is in charge? As noted earlier in this report, there are many sources of power in a community including its various councils, powerful families, powerful individuals, economic interests (e.g., the store, the alcohol retailer, the village corporation), key officials, the residents as a consensual group, various age groups, the church, and so on. When any of these forces are

seriously divided on the alcohol control issue or on a particular solution or if they find their vital interests at risk, the likelihood of a successful local option law election or successful post-election enforcement is very small.

For example, in one community the IRA was very supportive of the local option law but the city council was opposed to it. The mayor blocked the holding of a local option law election and convinced the city council to enact an invalid emergency ordinance to prohibit the importation of distilled spirits. Meanwhile the IRA returned to the petition process for another try. In other communities, the clerk, the mayor, or the council have deliberately let petitions "die" by not meeting the time limitations. The complexity of the electoral procedures lends itself to these kinds of uses and abuses of office and the subsequent subverting of community consensus by opposed power blocs.

Sometimes, these divisions do not appear to be serious until after an election. Internal conflicts in the local power structure may not surface until the role and interests of different local institutions clash over enforcement. For example, a group of residents invested in maintaining traditional values initiates a petition for Option #4. They receive the support of the IRA council. The city council and the mayor find themselves opposing the passage of the option, but because they fear that the community will blame them for the loss of services produced by the loss of tax revenues from liquor sales or that they will be the "bad guys" when residents and relatives are arrested for violations. Option #4 passes, and the city council must enforce it, but receives no support from the IRA council because the local option law (which the IRA council supported) is a state law and therefore the responsibility of the city council.

B. Conflicts among Vested Economic Interests

Where economic vested interests and other power bases act in concert, the local option law may be perceived to be of little value. For example, in one

community, the alcohol retail outlet, owned by the village corporation, generates sizeable profits by selling alcohol to visiting tourists; rather than closing this outlet, the community agrees that it will limit hours of operations and the amount of alcohol that can be sold to individual village residents. In another community, the IRA owns and operates the alcohol retail outlet, generating income to itself and tax revenues to the city. The city provides the police authority to control alcohol problems and retains the ability to regulate the operations of the retail outlet by ordinance. In fact, the IRA council, the city council, and the health council have overlapping memberships and combine to finely-tune their control over alcohol without having to rely on law-making.

In many other situations, conflicts arise when one local group is vested in catering to the demands of visitors while other groups have little or no interest in this enterprise. For example, in one community, a hunting lodge owned by white hunting guides catered to fly-in hunters; the Native community had no investment in this enterprise and was opposed to this outlet and its license. As Alaska develops its tourist industry, those communities most affected by this development will be less likely to restrict this lucrative economic activity.

In some cases, alcohol sales subsidize the unprofitable portion of the village store. In these instances, there may be a significant difference of opinion about whether the best solution is to continue alcohol sales, discontinue the sales, raise the food prices, improve the management of the store, and so on.

Similarly, communities with competing alcohol retail license applicants may decide that the local option law is a less effective tool than the liquor license protest to ensure that the preferred applicant receives a license and the others are refused. It is primarily when the preferred retailer is the village corporation, the IRA, or the city government that Options #1 and #2 of

the local option law appear attractive.

These economic interests may be translated into votes, as both problem drinkers and non-problem drinkers support the maintenance of the retail outlet and the regularity of supply and moderate prices which it provides.

C. Conflict over Solutions

Communities that are very divided over the issue of the local option law may not be divided at all over the issue of alcohol problems and alcohol control. The division may be more over which solution is most appropriate for that community. For some communities, the problem is seen to be having a local alcohol retail outlet or the practices of that outlet (e.g., selling to minors, selling to intoxicated or dangerous people, selling to bootleggers); in these cases, a successful liquor license protest may be seen as a more direct solution than a local option law election. A local option law election would be only a fall-back solution to a failed protest.

Many view the local option law as a dangerous experiment, perhaps as dangerous as the presence of alcohol. The dangers that are perceived include:

- the intrusion of external authority (e.g., troopers) into the community
- the heavy fines and jail terms inherent in the law
- loss of religious, medicinal, or celebratory use of alcohol
- punishment for non-problematic drinking
- punishment for possession
- fear of search and seizure
- fear of loss of vehicles
- fear of reporting on relatives and friends
- fear of increased and dangerous homebrew
- increases in bootlegging
- loss of more appropriate and flexible control mechanisms
- fear of divisions due to elections
- retaliation from dangerous drinkers
- symbolic loss of local self-control
- more contact with and dependency on external agencies.

Some also compare these inherent dangers with the perceived likelihood of solving the alcohol problem using the law. If the perceived rewards are few and

the risks high, this solution may be avoided.

D. Division over Values

The prospect of a local option law election, in some communities, reveals some deep conflicts over basic values. The choices made about community control over access to alcohol do not seem to divide the drinkers from the non-drinkers. The dividing issue seems to be between responsibility for the welfare of the community and responsibility for the rights of the individual. Those who drink in a responsible fashion, without damaging their communities, do not wish their actions to be limited in order to protect the communities from irresponsible drinkers. Those who are most concerned about community welfare, particularly the life and death situations created by excessive drinking, are willing to go to any lengths to preserve the community, even if personal liberties and constitutional rights have to be abrogated. These latter members do not understand why the legal system, including the new local option law, appears so weak in protecting their communities.

E. Division over Persons

It is one thing for villages to achieve consensus on the nature of the problem and quite another to agree on "who" is the problem. It is common for residents to agree that misuse of alcohol is the danger but for individual residents to say "I am not the problem." Thus, divisions occur when the community considers a universal solution to handle the problems which are perceived to be created by only certain individuals. Some non-abusive drinkers hesitate to pass laws they know they are going to break as a matter of course. On the other hand, both abusive and non-abusive drinkers may support the community consensus on having a "dry" village even though they intend to individually violate that consensus.

It cannot be assumed that those local residents who challenge aspects of alcohol control laws, including the local option law, are the heaviest consumers or most problematic drinkers in the community. Some informants note that these laws have produced "constitutional mini-lawyers" particularly among those who are not alcoholics or problem-drinkers, who are accustomed to drinking in moderation, who find that their drinking is now considered to be a crime, and who, while sharing the general community concern about alcohol-related problems, do not view themselves as a contributor to that community problem.

It was reported that, while in some cases, the greatest divisions appeared between drinkers and nondrinkers, more often the divisions occurred over conflicts of economics, individual versus community rights, and selected solutions. It was also reported that, in some communities:

-- many of those who drink heavily in the hubs enforce the local option law most strenuously in their home village
-- even the heaviest drinkers and bootleggers supported the local option law because "we needed some control on ourselves"; of course, bootleggers are likely to support a ban on importation as a spur to their trade.

F. Divisions among Groups

Any communitywide solution to the problem to alcohol control is likely to reveal other deep divisions within a village population, such as:

-- family and clan factions and feuds
-- victims and offenders
-- age and sex groups
-- ethnic and racial groups
-- internal versus external affiliations.

Community control over itself is gutted by inter-family feuds and other historical conflicts; any conflict or division may suffice to disable a community from acquiring unified control. It would be interesting, but probably impossible, to discover how a community local option vote divides along these (non-alcohol related) lines.

In some instances, the local option and its enforcement (via reporting and

the actions of the VPSO) become a battlefield for the continuation of power conflicts among families which is manifest on a regular basis in council elections. Family conflicts become even more heated on the alcohol control issue if the local bootlegging is conducted primarily by one family. Finally, family conflicts surface when the impetus for the local option law comes from the recent alcohol-related death of a member of one family and the issue is skirted by another family.

The local control of alcohol appears to pit the victims (e.g., women, elders) against the offenders, usually young and middle-aged men. Women appear to be at the highest risk to become victims of the alcohol-related behaviors of others. As a consequence, women in general, and mothers in particular, appear to be the most supportive in adopting local legal constraints and enforcing these constraints as observers and reporters. Women appear to be far more likely than men to vote for alcohol restrictions because of the risk of victimization not only to themselves but to their children. The role of women as abusive drinkers and perpetrators of dangerous behaviors is uncertain in its effect on support of the local option law.

In only some communities do women constitute an effective traditional or modern base of power that can be exercised to control the behavior of men. In cultures where women are attributed power as a matter of course, their influence tends to be pervasive, but often only in certain aspects of village life due to a cultural division of authority between men and women. In other cultures, women appear to have been systematically excluded from power. However, in more recent times, women have acquired more power through the electoral process by voting in blocs. In addition, because of their higher levels of education and greater experience with "paperwork" matters, many women know how to obtain and exercise power through the use of <u>formal</u> indirect and non-local means. Given

the ability to call upon troopers and direct the priorities of VPSOs, women may now be gaining increasing power to control the otherwise uncontrolled habits and behaviors of men.

A local option law election can be seen as a challenge to existing authority or the freedom of specific groups by a coalition of persons or groups who may constitute the majority view on this issue. For example, the impetus for holding such an election commonly stems from the efforts of human service providers, churches and their most active members, elders, activist council members, and women. This has been portrayed as a "power grab" by opponents in some villages.

There appears to be a great cultural gap between these concerned adults and some of the village youth. Youth's lack of orientation to the future and their lack of a broad range of values that are patterned on those of adults reduce the ability of adults to control youth's behavior.

> Widespread teenage drinking, despite adult disapproval, reflects the operation of a substantially autonomous youth culture in which drinking plays an important role. Particularly where the society has legally restricted drinking to adults, drinking becomes for the underaged a claim to adulthood - one of a long series of such claims, and one more easily attained than others. In such societies, teenage drinking is, perforce, somewhat segregated even from the legally tolerated heavy drinking of those in the first few years beyond majority. (4, p. 24)

The challenge posed by young people is less in the electoral process where they may have little representation than in the actual enforcement of the law. Where the challenge is posed by young people of voting age and inclination, some elders have avoided holding an election for fear that the young voters would successfully support the opening of a village alcohol retail outlet.

When the problem drinkers are predominantly young men, there is some question whether their physical defiance of law and law enforcement would make them immune from traditional or modern rules and authority. For example, in one

community, when the firefighting crews return home, they commonly get drunk. The elders want to jail the drinkers and wanted other villagers to formally file complaints. However, little was done because of the fear that older people "would be punched out."

Younger males are most often identified as the group opposing passage of option #4 in their communities. This group is often reported as wanting the community "wet". They are the primary "party" organizers who collect money and "charter" alcohol in. Young males constitute a peer group which has access to seasonal cash money from commercial fishing, firefighting, and soon, tends to spend the surplus on "partying".

This study has revealed a continuum of responses by this group regarding local option elections. In certain communities the younger voters made up the bulk of opposition votes to the passage of option #4. Petition drives to hold a second vote on option #4 after its initial passage have been initiated by the younger population in the hope of repealing that option. One community experienced its younger electorate circulating a petition for option #2 (a community liquor store) where no liquor outlet had ever existed. On the opposite end of the spectrum is the example of younger voters returning to the community from seasonal employment to voice their opinions about the upcoming option #4 election, but not voting in the election, reportedly out of respect for the wishes of the elders.

Concern has been voiced that when this generation assumes positions of power there will be a wholesale reversal of prohibition efforts in rural communities. Another interpretation is that the younger generation's opposition to the local option election is an expression of their developmental state and, as they progress into positions of responsibility, their opinions regarding this issue will change.

Some residents interpret the lack of organized opposition to the adoption of

presented option by young people as signifying the substitution of alcohol by marijuana and cocaine and, to a lesser degree, by other substance habits (such as vapor sniffing, ingesting hair tonic, and other modes of becoming "high"). As the new penalties for the acquisition, possession, distribution, and use of alcohol begin to approximate those of drugs, the lower costs and greater invisibility of drug use would be predictive of additional substitution. In addition, villages, having less experience with drug use and misuse and seeing the major behavioral outcomes of drug use as involving less risk of violence to self and others, tend to express both concern and helplessness about this use. While their greatest fear tends to focus on the truancy and poor school performance of their children, predictive of poor individual and community outcomes, they see their communities as either powerless or insufficiently organized and educated to deal effectively with this new problem.

G. Divisions between Native and White Residents

In most small communities, the only white long-term residents are often the school teachers. While a significant local employer and charged with the responsibility for village children, teachers' role in community decision-making is often limited by their lack of numbers, their lack of influence, their different ethnic and value identification, their isolated physical living and working locations, and their temporary status. Nonetheless, they appear to have played an active, if paradoxical, role in local option law elections. Native residents appear somewhat confused by the assortment of values exhibited by teachers, including:

-- opposition to alcohol use by students
-- supportive of village being "dry"
-- opposed to being personally "dry"
-- opposed or indifferent to school alcohol prevention programs
-- supportive of individual, rather than community, controls over consumption

-- supportive of normative (western) drinking patterns and opposed to abstinence.

White residents vary in their responsiveness to community concerns. In some communities, they not only support but spearhead the drive for alcohol controls; some appear to be the vehicle used by elders to organize the local option petition process. In other communities, they set themselves apart and above the authority of the community. In these latter cases, they appear to see the local option law as directed to "the conduct of Natives" rather than to improvement of communitywide social health. The language they use is "they [Natives] really need it, alcohol is their biggest problem." These residents view their own drinking as private and non-problematic; they tend to insist on their individual rights and liberties and challenge all community departures from the letter of state and federal law. They are also aware of and exercise all of their civil rights when reported for violations.

Some white residents note about their peers that it is one thing to stand up for your legal rights and quite another thing to "ignore the reality of where you are living." They suggest that a person's continued defiance of the community can result only in their premature and unwilling exit as orchestrated by the powers of the community. It is only those communities where one or more white residents have economic or police powers that villages find it difficult to control their activities or limit their influence.

Some villages have had some difficulty in the past in controlling the actions of air carriers who provide the primary transportation services to the community. Communities have expressed dismay that, in some instances, air carriers have ignored their requests for assistance and cooperation and have challenged local authority by continuing to deliver alcohol and even bootlegging. For example, one community, in the immediate post-pipeline project period, adopted a control ordinance and sent a notification of this decision to

air carriers, cautioning them not to transport alcohol into the community. The local trooper was reported to have told the community that their prohibition was not enforce-able under state law. The air carriers were reported to have reduced their service level to the community dramatically and immediately as a form of punishment; other carriers ignored the ordinance entirely. It is not surprising that these communities have turned to the state law in order to ensure air carrier compliance with community desires.

H. The Role of Community Support Agencies

A number of regional and statewide agencies provide services to villages; these services include health care, mental health care, alcohol prevention and treatment, domestic violence assistance and other social services, and so on. While agencies and communities share a generalized concern with alcohol use and related problems, their definitions of the problem, their assignment of responsibility for its solution, and the means leading to the solution often appear widely divergent. In an oversimplified model, the way each perceives the other may be characterized as:

1) Agency about Community — village youth are directionless; drinking is accepted by the community; individuals have to take responsibility for their own lives; treatment programs cannot do very much without community support; agencies are only consultants and helpers; communities seem indifferent or helpless to the losses due to alcohol, are unwilling to actively and firmly intervene in others' lives over a long time period.

2) Community about Agency — the agencies are encouraging individuation and its social-psychological risks for small community residents whose culture requires close social relationships and conformity; the agencies are blaming the community for events that have not been under community control, such as rapid "industrialization, modernization, westernization"; communities have never

confronted a range of problems as complex as these and do not have the legal, management, or leadership tools to resolve them; agencies tell communities to use modern legal tools in pursuit of contradictory traditional and modern values; communities do feel the personal and cultural losses deeply, but cultural tradition suggests that "life is fragile, death is not preventable, you do what you do and take your chances".

Depending on the service program, some agency personnel and many community residents view "the problem" as alcohol, that is, "the devil is in the bottle." Controlling the substance and individuals' access to it is seen as a positive permanent or interim step in protecting the individuals and their communities. Other personnel and probably fewer residents see alcohol as the result of "the problem", which is defined as major uncontrolled economic and social transformations of individuals, families, communities, cultural roles and ties, and identity, undermining the sense of local self-control and resulting in feelings of helplessness and weakness.

Both viewpoints have an investment in the local option law. The former sees the law as an effective constraint on access to alcohol; the latter sees the law, not as a solution, but as an interim, stop-gap measure to help villages slow the pace of alcohol-related violence.

Although these programs are subject to community decisionmaking, the regional service providers are not neutral in terms of their support of solutions to the villages, since the function of these providers is to promote the reduction of problems. These providers try to generate community support by showing what new resources and solutions are available and advocating their use. When the providers are well-organized, entire sub-regions can collectively and simultaneously investigate these new solutions. By taking the initiative, these providers provide both facilitation and pressure to hold a local option law election. As one service program respondent noted, "Having a regionwide effort

and a team effort, we made it easier for them to say 'yes'."

I. The Local Option Law and Inter-Community Effects

The local option law was designed to be available to individual villages. However, the ties between villages in the same region and subregion are so great that the alcohol problem is seen as a common regional or subregional issue. Indeed, it is not uncommon for a dozen or more villages to meet together to attempt to devise and enact a regional solution.

Commonly, these meetings, while recording the mutual problem, also note that differences between villages made a solution for one village a problem for another, even though both solutions may be provided by the local option law. For example, if one community enacts a ban on sale and importation (Option #4) and a neighboring community opens an alcohol retail outlet (Option #1 or Option #2), they may be working at cross-purposes; the controlling community's efforts are undermined by the increased availability while the retailing community may receive the exported problems and problem people of the controlling village. Other effects that may occur include:

- increased incidence of alcohol-related accidents and death as residents travel between communities
- changing immigration and outmigration patterns as access to alcohol changes
- the cost of government goes up in the retailing community
- the alcohol outlet becomes a source for increased bootlegging to the controlling comunity and the rest of the subregion
- power and purposes change as the wealth of one community is accumulated in the other
- the reputation of and quality of life in the retailing community declines.

The same effects may occur when one community votes a ban on sale and importation and a neighboring community takes no positive action at all.

These differences occur for a number of reasons:

- different perceptions of the alcohol problem
- different values applies to drinking and drinking behavior

-- different modes for controlling alcohol or alcohol-related behaviors
-- different economic, religious, or political orientation
-- different self-concepts
-- different situations (e.g., road-connected, not road-connected)
-- different racial composition
-- different history and development.

One of the most serious inter-community problems is created when one community, in order to reduce the availability of alcohol in the subregion, wants a sister community to close down its alcohol retail outlet, particularly if the controlling community writes to the ABC board to protest the license. Closing down a subregional distributor can drastically increase the difficulty in obtaining alcohol by increasing the distance, money, and time that is involved in obtaining it and also result in undesired changes in distribution, such as increased bootlegging.

There was some suggestion that, for purposes of local option law elections and liquor license protest, communities that are geographically tied and tend to function as one community should be allowed to vote on the local option law and/or have standing before the ABC board as if they were all residents of the same community. They suggest that the geographic boundaries that have been provided to distinguish them do not reflect their true nature.

J. The Local Option Law and the Electoral Process

It has been suggested that a valuable product of the local option election process will be "to vest a people in an electoral system with which they are still somewhat unfamiliar and to assist in the realization that voting can make a crucial difference in the fabric of their lives" (5, p. 8) and that the local option elections will be "tangible evidence that each registered voter in a village can be a part of the voting process and that villages can be self-determining entities." (5, p. 11)

This, in fact, may be the case only in a select number of communities in

which the outcome of the local option election has been a mirroring of the total community consensus and enforcement is backed by the whole community.

Those communities holding a local option election in the hope that the law will "make a crucial difference in the fabric of their lives" have often held the election in response to a recent tragedy. In these communities the results of the election are less an expression of the community consensus regarding alcohol use than an emotional reaction to the community's loss. The resulting problems of enforcement and the tensions created within the community because of the reality of the vote tend to disillusion the voters rather than "vest" them the electoral process.

In other instances, local option law elections have been held in response to an unsuccessful liquor license protest, to perceived lack of trooper enforcement efforts against bootlegging, and so on. These also are less an investment in the electoral process than using any means to meet the same objective. It is not at all clear that going through the complex, energy-consuming electoral process to enact a local option even helps villagers understand the process; the less they understand it, the less likely they will be to become invested in it. Similarly, the less that they find the law, once enacted and implemented, actually meeting their objectives, the less investment they have.

Establishing village law through the electoral process may have a number of unanticipated consequences:

- it may make law-making and enforcement easier by reducing individuation of council members and the VPSO
- it may shift the burden of control from individuals and groups to the entire voting population
- it may be more effective than a liquor license protest because it involves more people more anonymously
- it may be another means to reaffirm already existing village standards and rules
- it may help the electorate override the weakness or opposition of the council.

On the other hand, the electoral process may be used to challenge the very

roots and legitimacy of village power structures; depending on one's objectives, this may be a very good or very bad outcome. Once the roots and legitimacy have been successfully displaced, the core direction and wisdom of the village may also be lost.

Experience with the local option law election process shows that elections can serve to exacerbate community divisions. Nonetheless, observers tend to agree that controversy over the local option law is good, because it focuses lengthy attention on the problem, helps to clearly identify the issue and establish consensus, and generalizes from the individual loss to the community problem.

It is also clear that the time required to enact a local option allows residents to sort out their objectives. For example, in one village, a petition was circulated following an ALSC presentation and a sufficient number of signatures was obtained within a half-hour. Subsequently, the community overwhelmingly voted for Option #4. Still later, the community defeated the incumbent council president because of his strong support for the law and elected a new council member pledged to more lenient enforcement of the ban on importation.

It would be unwise to attempt to generalize about community desires from the results of a local option law election. Much depends on <u>who</u> voted and <u>why</u>. In one community, for example, it was reported that opposition came from the owner of the alcohol retail outlet; he imported a dozen of his employees to the village, registered them in time for the election, and defeated the option. In other communities, notices were torn down as soon as they went up, petitions were destroyed, and councils have required new elections.

There is insufficient information available to predict or explain the preceding factors in the petition process, the voter turnout, or the outcomes of many local option law elections. In some communities, only a relatively small

fraction of the electorate actually cast ballots. The pattern of "who" voted varied considerably from community to community. In some, only the activists on either side of the issue appeared to come out. In others, non-Native residents either participated actively or appeared to avoid the election entirely. Some residents suggested that these latter members thought that, by not voting, they would not be bound by the election results or by the community feeling expressed in these results. Alternative explanations suggested that non-voting members were allowing other forces in the community (such as voting elders) to dictate their will on community life. Avoidance of voting on such an important aspect of community life appears to be one means of resolving the personal conflict between community and personal rights and responsibilities.

A large number of white residents in a community is not necessarily predictive of a vote against the option; while whites generally tend to have a far higher rate of voting participation than Natives and could dominate elections even while they are in the minority, they also tend to abstain on some issues about which Natives feel strongly or which whites consider to be "Native issues." Low voting participation does not mean low voter interest.

It is not possible to predict the outcomes of elections based on the petitions. In some communities, a small number of signatories supported the petition, but a large number of voters turned out to pass the option. In other communities, a large number of signatories were offset in the election by a motivated electorate in opposition.

An overwhelming vote in favor of an option does not, in and of itself, indicate community consensus; there are several examples of communities feeling that they were "railroaded" into enacting the option by a local power broker or by the rush of events following a community loss. Some feel that they are now "stuck" with a law they do not want and that will require great effort to rescind. The popularity of the option may also not be indicative of the amount

or success of its enforcement.

Conversely, it is difficult to ascertain the meaning of a closely split vote in a community. It could signify a split community or only a split electorate. The council actions which are taken in response to a closely split vote will depend less on the vote than on who the council members are. In many villages, who the elected official is may be more significant than the stated will of the electorate.

The failure of a local option at the polls does not mean that the community is opposed to alcohol control. Since the impetus for such a law commonly begins with a minority of persons (e.g., a health aide, teacher, health council, and so on), it may take concerted campaigning, outside assistance, and more than one election to engage the support of the majority. The very fact that certain villages have held local option law elections, regardless of the outcome, has surprised and pleased many local and non-local observers. They suggest that a closely split vote on an option would have the same effect on community life, whether the option was adopted or rejected, since lack of consensus would diminish enforcement efforts and exacerbate community divisions and tensions. However, in some communities, lack of electoral unanimity has not seemed to damage early and strict enforcement; this suggests that village consensus is not always reflected in electoral results.

Passage of an option may be the produce of symbolic support for the option from prominent persons and agencies rather than the consensus of the community to change its alcohol consumption patterns. The changes which occur as a result of or in conjunction with the local option law election may have more to do with other village factors than with the passage and enforcement of the option.

XII. Changes in Village Life Since the Local Option Law

It is difficult to assess the changes which directly and solely result from the passage of a new law, not because it is difficult to measure change but because it is difficult to prove that the measured change was caused by the new law. There are many concurrent forces of change constantly sweeping through Alaska villages, both internally and externally generated. Many of these are difficult to even perceive until long after the change has actually occured. We will refrain from attributing changes in village life directly to the local option law, but will show how the local option law, in conjunction with some other forces, is caused by significant change and contributes to significant change in village life.

The authors agree with ALSC alcohol project staff that any solution to alcohol use or other village social issue must come, finally, from the indigenous population rather than from the external "magic" of the state. There is no doubt that the state can tangibly support these solutions, but if the solutions or the method of state supports are not congruent with other basic aspects of village life, both the solutions and the supports will be either subverted or rejected by the village. External government must be very cautious not to use villages and village law as experiments. Failed experiments in a laboratory will make laboratory researchers unhappy; failed experiments in villages further the downward path of repeated demoralization of villages trying to recapture control of their futures.

One popular form of social experimentation is passing a law without "investing" in it; that is, laws are passed as gestures, rather than as mechanisms for social change with the commitment of human energy, human determination, and other resources to make them work. Sociologists have noted that laws are often passed but remain ineffective because they are not enforced. They are not enforced because they are not meant to be enforced; they are merely

ways that politicians use to placate the demands of one group without seriously impacting another group's ability to continue in its activities.

> Popular sentiments also affect the enforcement of legislation. Many a control attempt has failed to change consumption because a piece of legislation has not been effectively enforced. Sometimes legislative bodies enact purely symbolic legislation not seriously meant to be enforced, and sometimes the state bureaucracy is simply unsuccessful in enforcing a regulation...
>
> The actual impact of control legislation is dependent on the political and legal traditions prevailing in each country. Many North American jurisdictions, for example, traditionally express moral concern in the form of detailed legislation that is neither felt as always binding by the population nor consistently enforced. In countries where the law has greater respectability, such as Scandinavia and Switzerland, purely symbolic pieces of legislation normally do not get passed, whereas those that do, are meticulously enforced and observed. (4, p. 93-4)
>
> Control legislation both expresses and molds the climate of opinion, and both law and opinion change in response to economic and social transformation. Nevertheless, it may make a difference whether or not popular sentiment is transformed into state policies. (4, p. 91)

Failure to legislate <u>for</u> the people may not deter a powerful social transformation coming <u>from</u> the people.

> In 1912, about a fourth of the Dutch adult population signed a petition requiring local option. Only the two-chamber structure of the Dutch legislature prevented this mass sentiment from being translated into legislation. In the early 1920s, the House of Commons twice passed local option legislation, but both bills were rejected by the Senate, the first time by one vote only. The temperance ethos that permeated the Dutch population was virtually strong enough to dry up the whole country without the support of legal coercion. (4, p. 92)

In the case of the local option law, as we have seen, the law itself, the path to its use, its enforcement, and its long-term and short-term effects on social organization and culture remain conjectural. We shall confine our descriptions of change largely to the topics of altered access to alcohol, altered use patterns, altered modes of social control, and altered quality of life.

A. Changes in the Distribution of Alcohol

The alcohol distribution industry respondents in this study have suggested that, at the time of the consideration and passage of the local option law, their industry did not believe that it would be significantly damaged by the law. At the time, the industry was far more concerned about the potential increase in excise tax statewide; this prospect was so much more threatening that the industry ignored the local option law and, unintentionally, may have eased its passage. The industry appeared to be less worried by any financial implications of the law than by the array of statewide "neo-prohibitionist" actions being considered by the government at the time.

There does not appear to be any legitimate way to obtain precise information on changing patterns of retail alcohol sales in Bush Alaska because there are so many modes of transportation and sale; where an item is purchased is not indicative of its final destination or user. However, according to industry respondents and Bush retailers, while some concern existed that villages voting "dry" would reduce the business potential of hub alcohol retailers, the loss of direct access to these villages does not appear to have significantly damaged existing sales. This needs to be examined, of course, by review of sales by community, judicial district, region, and the state. If, however, no significant change has occurred, this may be attributed to:

-- major failures in enforcement
-- major exportation of behaviors to hubs
-- lack of significant volumes having appeared previously in villages (that is, villages having populations that are too small to show up in the statistics; a large party in a village may not appear as even a blip in the hub's statistics)
-- changes in substances used; that is, substituting distilled spirits for beer, or marijuana for alcohol
-- changes within only certain populations, resulting in only a small or immeasurable change in per capita consumption rates across aggregated populations and/or communities
-- increased unreported bootlegging or other forms of unreported distribution.
-- some retailers altering their merchandising and their

products to appeal to new, different, and growing demands within the hubs themselves (e.g., selling wines to hub residents rather than spirits to village residents)
-- increased sales to some individual members of local option communities coming into town by private vehicle
-- increased informal bootlegging; that these volumes are intended for in-village use is indicated by an increase in the sale of pints, that is, amounts that are easier to smuggle back into the community
-- increased sales resulting as part of the normal shopping in hubs conducted by villagers.

2. Altered Access

The response by alcohol distributors and carriers has been, generally, to comply with the local option law. This is due not only to the stringent penalties which can result from violations, but also to the increased pressure on hub distributors to reduce their contribution to public safety problems in the region as well as in the hub, under the threat of new ordinances, increased taxes, and other restraints on profit potential.

There has been some attempt to apply village local option law restrictions at the point of exit from a retailing hub (on the grounds of "intent to export" to a "dry" community) rather than at point of entry to a village ("intent to import"). The amount of effort and success of this attempt is unknown at this writing.

There is some division of opinion as to who is or should be primarily responsible for stemming the flow of alcohol from hub retailers to the "dry" villages. Hub retailers, while no longer mailing or delivering bulk quantities of alcohol to these villages, deny that they have the right or responsibility to intercept alcohol as it enters village boundaries. Villagers find themselves hard-pressed, in many cases, to effectively intercept alcohol importation, due to the combined ingenuity of importers, lack of sufficient police, and lack of effective after-the-fact policing tools; for example, once alcohol has entered the village, villagers find it legally difficult to confiscate it,

to search for it and seize it when they see a drunk person, or to convict a person based on alcohol presence as prima facie evidence of importation. They can rely only on the less-formal means of direct counseling and warning of the offender by other residents, the council, or the state trooper. Villagers suggest that the hub retailers should exercise more control by restricting sales (e.g., no more than one bottle per person per day), particularly when these retailers know that visiting villagers are taking case lots of alcohol back to the villages.

However, the retailer has no way of knowing that the buyer will attempt to import the alcohol into a non-importing community. Indeed, some buyers will cache their alcohol just outside the community borders, returning to it from time to time, and re-enter the community intoxicated but not transporting alcohol.

Air carriers appear to heed the new restrictions adopted by villages and attempt to prevent flagrant violations; in particular, they have become cautious when communities, individuals, or police have notified them of others who were intending to accomplish a "booze run."

The law and its penalties have altered some of the basic economics of alcohol distribution in the Bush. There is no doubt that damaging the "economies of scale" accompanying legal sale and importation has increased the cost in time, energy, and money to obtain alcohol. Whether this increased cost has reduced the rate or volume of consumption is doubtful.

> Probably the most extensive quantitative literature on the correlates and determinants of consumption is the econometric literature on the income and price elasticity of consumption. These studies have reaffirmed that consumption of alcohol, as of other commodities, is responsive to changes in income and price. Nevertheless, there is considerable variation by time and place in the value of the elasticities -- that is, the elasticities themselves are historically conditioned. In the longer run, it is clear that the "long waves" of consumption mentioned earlier cannot be accounted for by changes in income or in price. The period 1950-1975

> was marked by a general rise both in affluence and in alcohol consumption in the societies included in the study, but these trends may be most appropriately viewed as specific indications of general changes in the structure and culture of the societies. (4, p. 27)

It is often suggested that, were a liquor retailer or air carrier not available, the money spent by village residents on alcohol would both remain in the community longer and be spent on other, more useful items such as food, energy, clothing, equipment, and so on. There has been no evidence adduced to support this suggestion. It is more often suggested that the money local residents intend to use for alcohol would be spent elsewhere (e.g., with alcohol mail orders, bootleggers, drinking in other towns, buying more expensive alcohol); while this might result in altered drinking patterns (that is, changed amounts, locations, substances), it is uncertain what community objectives would be accomplished by these alterations.

B. Changes in Alcohol Consumption and Alcohol-Related Problems

Because we have no evidence to the contrary, we may assume that the local option law has not significantly reduced the overall volume of alcohol consumed in any region. On the other hand, communities and local social agencies report that there have been significant changes in the reporting of alcohol-related problems, particularly declines in the number and severity of violent incidents. How, then, are we to explain "no significant change" in volume sales accompanied by "high rate of reported changes in problems"?

Recent international literature on the control of alcohol (4, p. 90-1) suggests that the

> "relations of alcohol consumption level and patterns to casualties and social problems associated with drinking are far less clear and universal. In cross-sectional comparisons of societies, correlations of these problems with consumption level are frequently negligable. It is clear that both patterns of intake and societal response to alcohol problems have to be taken into account as mediating factors between the level of overall consumption and social consequences of drinking."

This suggests that "alcohol-related problems" may be determined more by other social forces than by changes in absolute consumption levels. For example, where the alcohol is consumed, under what circumstances, and what behaviors are sanctioned within certain populations may have a more significant effect than volume consumed.

The international literature points out, for example, that in some countries with a low rate of overall consumption, there is a very high rate of alcohol-related violence, conflicts, arrests, and poisoning, indicative of unrestrained drinking patterns. "Conflict-prone drunken comportment was not confined to isolated subgroups of inebriates but was a more or less integrated part of the drinking habits culturally prevailing over the general population." (4, p. 45-6) This suggests that what one doesintermittent period of unrestrained drinking (i.e., consuming large quantities in a short period of time) is derived directly from one's social and cultural setting. This accounts in part for societies that have a high rate of overall consumption but a low rate of conflict and conflict-prone patterns of drinking behavior.

What implications, then, can be drawn about a decline in overall consumption level in a given society and cultural setting? "Cultural patterns of drinking and drunk behavior do change, as indicated by the fact that in all the societies studied the ratio of indicators of social disturbance to aggregate consumption has gone down." (4, p. 61) This suggests that changes may be more the result of social and cultural changes in sanctioned behavior, in social control and reporting mechanisms, and in patterns of use than changes in overall consumption.

C. Immediate Village Experiences with the Local Option Law

Initial phases in the implementation process of a new rule controlling access to alcohol, whether it is a local ordinance or a local option, often

include:

- — a recent series of negative events related to alcohol in the community (it is not common to formulate new community policy based on events involving those villagers absent in hubs or other communities)
- -- an electoral change in the composition of the village council
- -- passage of a new ordinance or a local option
- -- posting of new laws in public places
- -- new community laws broadcast on regionwide radio
- -- new community laws transmitted to alcohol retailers, air carriers, and law enforcement agencies
- -- immediate reduction in serious events.

This last item requires some explication. A combination of forces, rather than a single legal change, tends to create concrete community change. For example, in one village, a community election not only adopted the local option but invested a great deal of authority in its new council chief. This new official assured the village women that he was "really going to work on it, not let anybody go, even my own son or brother." This was said in the same public meeting where all the laws were reaffirmed by consensus of all residents. It was reported that "everyone enthusiastically voted to ban alcohol from this village"; they were tired of the child abuse, the fighting, the stabbings, the shootings, the neglected children. The council extensively broadcast the new laws and invited the state trooper to talk about enforcement. All these steps created fear and caution in some community residents, about the level of reporting, enforcement, and penalty that was actually going to occur, and an alteration of their importing, drinking, and public behaviors.

The immediate effects on alcohol use and behaviors following local option law elections in many communities were quite pronounced, even in those communities where the elections involved low voter turnout and/or narrowly adopted laws. Most communities were marked by immediate, marked dryness, due to:

- — fear and uncertainty about enforcement and penalty
- -- fear of community opinion, feelings, and actions
- -- shared common objectives
- -- increasing enforcement by councils and VPSOs at points of

importation
-- adherence by alcohol distributors and transporters, reducing basic availability
-- altered drinking patterns at a distance from the communities
-- more cautious and private drinking in the community.

In the past, many of these communities had effected similar change for short periods of time by the issuance of emergency ordinances. Since emergency ordinances were time-limited and village concern seemed to dissipate as time healed the sense of loss, alcohol was often rapidly re-incorporated into village life. (In a few communities, however, the emergency ordinance seems to have been translated, in the minds of residents, into a permanent rule.)

In the case of the local option law, several factors appear to have lengthened the effect of community law-making; these include:

-- the presence and efforts of the VPSO and community police
-- the active involvement in enforcement by councils
-- improved communications with and response time of troopers
-- increased responsibilities for law enforcement and judicial officers
-- increased penalties for distributors and transporters
-- the fact that the law was adopted by the electorate, not merely the council
-- the non-time limited character of the local option
-- the high expectations derived from the experiences of sister communities
-- other substance addictions.

D. Perceived Changes in the Quality of Village Life

Like large urban communities, small communities are less interested in the outputs (e.g., numbers of hours worked, arrests made) of their police agents than in the outcomes (e.g., reduction in perceived violations). In villages, the indicators of outcomes of restrictions on alcohol sale and importation (and possession, in more restrictive communities) are not limited to arrest statistics. In the most restrictive or insistent villages, residents are not satisfied to see their restrictions result in more private, behaviorally unproblematic drinking. These villages insist that the community be free of the presence of alcohol, since they see alcohol as the cause or proximate trigger

for behaviors; they do not believe that people can or will drink in moderation, since the common impulse is to drink in order to get drunk.

However, in most communities, the indicators used by village residents to measure the success of their rule-making are, in many instances, more subtle than those used by public safety agencies. These indicators appear based more on measures and perceptions of changing community quality-of-life. To measure the sum of these changes would require extensive and long-term understanding of each community. These indicators appear to be positive, unlike public safety statistics which are, essentially, measures of negative events. These positive measures are elusive, based on a range of altered hopes, fears, feelings, perceptions, and self-indications rather than changed absolute incidence of consumption rates and alcohol-related behaviors.

These other indicators include a greater sense of safety in allowing kids to play at night (since fewer people are driving drunk), in being alone at night with husbands and fathers absent, and so on. These indicators, for which no data base exists, while quite detailed and subtle, may contribute to as powerful a measure of community self-control and well-being as the public safety measures (which also lack consistent data bases).

Many of those who voted against the presented option still like what the law has done for their communities, in terms of outcomes (e.g., fewer health aide emergency calls, less demand for the constant presence of the magistrate, more privatization of drinking, less public binge drinking, a more quiet community, less fear of others, fewer people hurt). Other indicators include general decline in the incidence of violence or threats of violence and of periods during which the entire village is drunk or drinking. There is a reported decline in drunken sprees as well as a perceived decline in the volume of alcohol imported to or available in the village at any one time.

The international literature (4, p. 24-5) suggests that, in most societies, there is a "temporal specificity" to drinking, a regular, daily, weekly, and seasonal (e.g., celebrations) rhythm. As countries modernize, often this pattern is changed by social and economic factors to more routine and regular patterns. It is suggested that an enforced local option disturbs these patterns of use and intervenes in the social settings which precede or involve serious conflict.

It is not only in subjective quality of life and law enforcement measures that the effect of these changes can be examined. For example, many health care observers have noted no significant change in the type or number of alcohol-related health problems in their communities since the local option law. These problems continue to be gastric problems, withdrawal symptoms, skin problems, toxicity, injuries, cirrhosis, hygiene problems, child neglect, and domestic violence. What they have noted is a reduction in the severity of alcohol-related traumas, due in part to the local option law and to the increased police efforts which intercept parties and fights in earlier stages.

The subjective measures are also supported by "harder" data collected by the Alaska State Troopers which indicate some declines in the regional incidence of suicide and suicide attempts, homicides, severe domestic violence, gun calls, assaults, and search and rescue. They report an increased number of persons willing to work with the trooper or the VPSO to "make cases." They note that the size of their caseloads has remained approximately the same, but has been focused on earlier detection and intervention. There has been, however, no systematic examination of the relationships among having a local option, having a VPSO, and having declines in these negative outcomes.

The combination of the local option and the efforts of the VPSO is likely to result in earlier identification of and intervention in the development of serious problems, thus altering the number, severity, and types of agency-

reported problems. It is likely that rates of less severe problems will rise, initially and dramatically, that rates of more severe problems will decline somewhat and not rise to earlier levels, and that the types of reported problems will change; for example, it is likely that alcohol importation offenses will increase, that alcohol-related deaths and other alcohol-related violence will decline, and that other substance offenses will increase as alcohol availability declines.

As reported earlier in this study, the immediate objective of villages was to reduce the incidence of alcohol-related problem behavior, including public drunkenness and public drinking. Since the local option law elections, many communities have perceived a steep decline in both public drunkenness and public drinking. Whether or not this perception is correct (and it is likely to be correct), whether or not there is less actual drunkenness or drinking, are probably not relevant distinctions in the communities' assessment of the quality of their daily lives. Even though the volumes consumed and the number of intoxicated persons may remain the same, villages will feel positive about their actions and the effectiveness of the law based on a perceived decline in problems. They will "feel" more "dry", even though they may not be more "dry". For some villages, this feeling has been a wonderful, exhilarating experience, enhancing their perception of increased local self-control over their daily lives and their futures. There is some danger that, over time, a decline in reporting, enforcement, and external support or an increase in the visibility of drinking or successful challenge to authority will contribute to an opposite sense of powerlessness.

E. Changing Patterns of Use

If the overall rates and volume of consumption have not changed since the local option law, what then accounts for these perceived declines in alcohol-

related problems and visible behaviors? It is suggested that these changes are due to altered patterns of use by the using population, including:

-- increased privatization of use
-- altered patterns of access
-- substitution of other substances (e.g., drugs, homebrew)
-- externalization of the behaviors and problems.

1. Privatization

As reported above, the enforcement of the local option has resulted in less alcohol being available in the village at any one time. Availability resulted in open importation of large quantities, much sharing and giving of alcohol, much public drinking, and much binge drinking. The decline in availability is the result of the banning and interception of large lots of illegally imported alcohol. While violations of the ban on importation are common, the size of imported lots has decreased from cases to bottles. Those residents who illegally import alcohol are importing smaller quantities, sharing it less, hiding it better, hiding their use better, retaining it longer, binging less, drinking alone and engaging in less problematic behavior. This is what is meant by privatization. It is likely that privatization reduces the social contact, rewards, and tensions which often lie at the heart of alcohol-related violence.

The removal of drinking behavior from the public view has reduced the rate of reporting of public behaviors, has increased at least some of the behavioral self-control of drinkers, and has improved the rate of perceived problems by community members. VPSOs, of course, encounter a large number of alcohol-related contacts but these tend to occur more often in private homes, as family members call on the VPSO for earlier interventions into slowly-developing alcohol-related tensions. While the most serious and problematic drinkers may not have altered their behaviors significantly, the more marginally or intermittently problematic drinkers may have substantially altered their pattern of use

in response to disturbed availability and public intolerance of behaviors.

The local option law, while perhaps reducing other forms of crime, has, by definition and in reality, increased the number of reported and unreported misdemeanor and felony violations of the ban on importation. There are many types of violations and violators. Some violators import and use small amounts of alcohol for personal and private use, without resulting behavioral problems, and tend to be tolerated. Those who are caught immediately lose their alcohol supply and often readily admit their violations.

Others attempt to regularly import larger quantities of alcohol, for party use, for distribution to youth, with resulting behavioral problems. They become ingenious, partially because they view the restrictions as a challenge and partially because of their fear of being without alcohol. They cache legally obtained stocks of alcohol just beyond the view and/or legal limits of the community. They send small quantities theough the mails. They empty syrup and clorox bottles and refill them with alcohol on shopping trips.

In addition, the ban on importation has resulted in importation and delivery to points just beyond the jurisdictional limits of the community; the alcohol is dropped off or delivered to individual residents who actually import the alcohol across the limits. The law has also led to the consumption of alcohol on the road or water system just beyond these limits (creating a serious increase in the likelihood of alcohol-related accidents, such as drowning and freezing), and to an increase in alcohol transported in personal luggage.

Respondents suggest that there has been a greater increase in "casual" bootlegging and "suitcase" importation than in organized bootlegging. Air carriers have reported an increase in the amount of new luggage being transported between villages and hubs, compared to the recent past when villagers would come to town with their travel necessities contained in a small bag or parcel. This is consistent with observations in hubs, where alcohol is

imported and sold by the case but exported from the hub in luggage.

One of the greatest concerns about economic effects of the local option law was the encouragement of organized bootlegging. Since it takes some time for the informal distribution to recognize and fill the new vacuum potentially created between demand and supply, it is probably too soon to assess any changes that have been made in bootlegging. The troopers have anticipated an increase and have responded in terms of enforcement; in addition, it appears that villages are more readily reporting organized, high volume bootlegging than individual importation for personal use.

2. Substitution

One of the serious dangers in removing the supply of a substance upon which people are dependent is the substitution of other, equally dangerous substances. It has been reported that the absence of alcohol has led to an increased use of marijuana, Lysol, gasoline fumes, hair spray, Listerine, and so on. These responses are consistent with fads and substitutes elsewhere.

Among the concurrent changes in many communities is a partial substitution of marijuana for alcohol, particularly in the 18-25 year old age group. It is reportedly seen as less behaviorally destructive by users than is alcohol.

Before the local option law, alcohol was the most popular substance since its purchase, importation, possession, and personal use were legally sanctioned for adults. By comparison, only the possession of limited amounts of marijuana was sanctioned. In effect, the local option law has altered these relationships, since:

-- it is no longer legal in local option villages to sell or import alcohol
-- the penalty for both substances are generally equivalent, while alcohol is far more visible and likely to be reported
-- alcohol is increasingly expensive in proportion to marijuana and more difficult to transport, hide, distribute, use, and dispose of (e.g., evidence)
-- the behavioral effects of marijuana (as well as cocaine

and some popular drugs) are less obvious to villagers and less troublesome from a public safety perspective; that is, declines in school or work productivity are less visible than alcohol-related motor problems and less critical in the minds of many villagers that the violent consequences of alcohol misuse

-- villagers have less direct experience with drugs, their visible effects, their long-term consequences.

In terms of substitution, however, "homebrew" is likely to become much more common since it is legal to make and possess fairly large quantities; it is also more likely to become, as it was in the past, a significant and profitable article of commerce. As predicted by many villagers during the consideration of the local option law, there have already been reports of rapid increases in the manufacture and distribution of homebrew, characterized in one community as "a booming business." It has become most popular with young people who have more time to spend in its manufacture. While it is true that the ban on sale and importation is partially eroded by the availability of homebrew, homebrew is usually made in small batches, requires large expenditures of time and attention, and tends to be consumed immediately upon completion which then requires a "dry" period during which another batch is created. Homebrew is thus likely to produce an altered style of drinking with fewer numbers of drinking, less quantity consumed, and occurring in an intermittent pattern. While the manufacture of homebrew is likely to become more lucrative due to the ban on importation, it is unlikely to seriously compete with distilled spirits because:

-- its manufacture is not easy to hide

-- its sale is illegal

-- its sharing with minors is illegal

-- its consumption can be toxic, if not correctly prepared

-- it will always take less energy to illegally import alcohol than to manufacture it

-- it is a less popular commodity for consumption than spirits or beer.

3. Externalization

There is a growing, although as yet unmeasured, feeling that as certain villages constrain the access to alcohol under the local option law a portion of the reduction in alcohol use and unrelated problems is actually "externalized", that is, removed from the village to some other place. The use and problems can be exported, as occurred in one community that adopted Option #4, because some residents simply move to the next "wet" community. However, the more significant externalization occurs when drinkers take their appetites, habits, and behaviors to the regional hubs. It was reported by older respondents that this pattern has always occurred when the home village rules or penalties became more strict than those in the hubs and/or when alcohol has been more readily available in the hubs. This intermittent (and, sometimes, permanent) migration will increase, to an unknown degree, the problem rate and resulting financial costs occurring in these hubs, particularly in their law enforcement, judicial, corrections, health care, mental health care, and alcohol detoxification and other social support systems.

Whether or not a village exercises formal controls over alcohol importation, sale, possession, or use, much alcohol consumption occurs in hub communities, particularly when seasonal wages and other income are received. Villages are likely to continue to tolerate this export of partying behavior, as long as:

-- drinkers take care of their important business before they become intoxicated
-- drinkers do not require that their families have to expand energy and time to retrieve them from hub jails
-- drinkers do not embarrass or reflect on the reputation of the home village or the family (some regional newspapers now regularly print the names of persons who fall into trouble when away from their villages, so the hidden remote behaviors are now readily visible back home)
-- drinkers do not attempt to import alcohol on their return
-- drinkers do not return home drunk, violent, or suffering from alcohol withdrawal.

It was reported that many villagers preferred to drink excessively in the

hubs because "we don't want our kids to see us when we are drunk." Thus, these persons can, in good conscience, support restrictions on alcohol use, importation, and sale in their home villages by exporting their habits and problems to the hubs.

Most regional hubs report increased visitation from villages that have enacted a local option. There seems to be consensus that the hubs become recipients for externalizing village problems as villages control alcohol; it is possible that the healthier the villages look, the worse the hub communities will look, by definition. However, there is no indication of a one-to-one correlation, that is, an increase of one hub problem for a decrease of one village problem.

Respondents suggested that, while some extravagant drinking is more common and tolerated in the hubs than in home villages, there are greater control and punishment mechanisms in hubs to intervene in negative behaviors; thus, the exportation of drinking is suggested to result in diminution of village tragedies and earlier and more effective intervention in behaviors in hubs. An alternative view was also suggested that some village residents who drink in hubs are more conscious of serious policing, unpleasant penalties, and the embarrassment of being jailed in hubs and that they therefore moderate their hub behaviors.

Whether village problems are externalized by voluntary actions (e.g., a villager going to the hub to drink) or involuntary actions (e.g., jail sentences, exile from the community), the hubs tend to be the recipients of these problems; in particular, the centralization of regional alcohol treatment services in hubs has led to an increase in caseloads. Caseloads have also increased due to more active referral and outreach efforts, more public awareness, increased policing, increased population size, new standards, and other case-finding changes. As a result, it does not appear possible to ascertain how

much of the increased caseload is due to externalization resulting specifically from the enactment of local options.

F. The Local Option Law as a Solution to Village Problems

Observers within and without the villages express uncertainty about which factors account for the recent declines in village problem rates -- VPSO, local option law, development of councils, stability of populations, earlier detection, earlier intervention, more jobs, maturation of populations, cyclical change in local control, and so on. They hesitate to attribute single changes to single causes, preferring to see the change as a systemwide change. On the other hand, they far more readily attribute negative changes to certain single causes, such as the opening up of an alcohol retail operation in a regional or subregional hub.

The history of past community and agency efforts to restrict access to alcohol has often been marked by immediate, although short-term improvements followed by a decline in enforcement effort and a resurgence of problems.

The international literature (4, p. 111) suggests that:

> While the overall increase in alcohol consumption could not be attributed to the general relaxation of control regulations in the study societies, the policy approach taken by most governments reinforced the increasing acceptance of alcohol into people's everyday life, and made way for expanding the supply. Conversely, a policy of avoiding futher relaxations in alcohol control could reinforce the more restrictive popular sentiments about drinking that are visible in many countries today. Apart from the direct impact which such a policy can have on drinking patterns or problems, it will provide support for what may already be a trend towards lower levels of consumption. Considering that alcohol issues involve very complex cultural, social, and political phenomena, policy changes on alcohol should be made with caution and with a sense of experiment. Sudden and drastic interventions by the state in drinking practices have often had untoward and unintended effects.

Of great concern is the too sudden imposition and enforcement of new bans in villages. Too strict enforcement of the new law tends to result in a growing

groundswell of resentment, resistance, peer pressure, and power struggle; this, in turn, results in abandonment of enforcement, increase in village problems, and the roots of a new cycle of rule-making and enforcement.

Communities which initially achieve real gains through the election and enforcement process often experience tangible declines as:

-- the priorities or interest of the VPSO and/or council change

-- the methods for interception decline in effectiveness

-- the drinkers become more knowledgeable of the law and their legal rights

-- community interest and effort decline

-- as the drinkers increasingly assert their political power, challenge the authority of local government, and devise ingenious methods to import and use alcohol and otherwise subvert the intent of the electorate for a "dry" community.

During this period of declining effectiveness, drinking and drunken behavior become more noticed, both on the streets, through visiting, and through the communications of the community (e.g., word-of-mouth, CBs, school behavior, work behavior, and so on). Residents begin to bring more alcohol with them, on their person, in their luggage, and on their own vehicles (e.g., boats, snowmachines); this process begins with a few bottles, then half-cases, and occasionally full cases. While the re-introduced volumes are not insignificant, they are not equivalent to the past mail and charter planeloads of alcohol entering the community. In addition, these more limited volumes tend to require very high prices, varying, it is reported, from $50 to $140 a bottle. This cost factor alone will constrain overall consumption rates.

There appears to be little congruence of opinion on the longevity of the local option law as actually used by villages. Some respondents feel that the

law will fail entirely to meet more than immediate needs and will be discarded. Others feel that the law is a stop-gap or interim measure allowing communities to move from a complete lack of control to controlled abstinence to controlled drinking. Still others, particularly village residents, feel that their selected option is a permanent feature of community life.

The debate over the permanent or impermanent life of the local option law is based on the individual's view of the modernization and future of the villages. Some persons feel that Alaska Statehood diminished the powers of the village to control their own fates and that the local option law is one instrument for returning that authority. These persons, predominantly Native, feel that the village control over alcohol will not, in the long run, derive from the local option law but from a more wholesale recovery of lost authority.

Other, predominantly white, persons feel that the local option law is a moratorium or interim measure to help communities get a handle on the devastating effects of alcohol during village transitions into the modern world. As one respondent put it, "Alcohol use dates back too far and is too prevalent to be eradicated by so superficial a devise as a law." At the end of this interim, they suggest, the patterns and problems of drinking by Alaska Natives will be "normal," that is, will approximate the patterns and problems in the rest of the industrialized world. During this interim period, they also suggest, alcohol education, preventions, and interventions, coupled with community organization, can be introduced so that once the "band aid" of the local option law is removed, the villages can progress without it.

The authors agree with only a portion of each of the preceding viewpoints. We disagree that the law in its present form is likely to be a permanent feature of Native villages, but also disagree with the suggested inevitability of "normalized" alcohol use and problem rates imitating their white, industrialized, and urbanized counterparts. It is more likely that the future

patterns will derive from whatever the villages desire as they regroup themselves, reorganize their own bases of local authority, devise and utilize their own methods, and control their own long-term objectives. To the degree that state and federal laws and agencies are found useful in meeting these objectives, they are likely to be respected and used. To the degree that they appear as obstacles, the villages will attempt to ignore or manipulate them.

The authors suggest that villages will take this independent path because much of their values, thoughts, and methods continues to be derived from their cultures; many of these village cultures find the local option law inconsistent with their accepted modes of community-solving. Inconsistencies occur in the arena of who makes decisions, how decisions are made, how interventions are made into the behaviors of others, the role of informing as a form of social control, the range of acceptable and appropriate control mechanisms, and the degree of rigidity or flexibility that is desired in communitywide laws, enforcement, penalty, and rehabilitation. Nonetheless, this law has rippled throughout the individual, family, social, community, intercommunity, and agency systems and environments, often redefining, at least temporarily, the balance of interests between individual rights and community rights to collective and individual safety and well-being.

In terms of the relationship between this law and Native culture, it remains to be seen whether alcohol control is a more important or less important issue in the long run than the alteration of traditional decision-making, the local exercise of power, the altered self-perceptions and morale which flow from the effective exercise of power, the sense of village self-control, and so on. Among the issues which remain unresolved in this study has been the <u>symbolic</u> nature of the local option law.

G. The Symbolic Component of the Local Option Law

In order to address the symbolic nature of the local option law, we must first summarize where we have been. We have found that the communities which were most successful in implementing their new law were those which:

1) knew that the law would not be self-executing
2) placed increased police effort in implementation
3) allowed much fear and doubt to continue about enforcement and penalties
4) experienced an immediate decline in negative events
5) understand that the law cannot keep alcohol out entirely (due to ease and invisibility of transportation) but can control behaviors by vigilant and consistent enforcement.

We suggested that the "healthier" a community is, the more likely that it will take advantage of the local option law. Thus, while this is a useful tool among others to solve local problems, the weakest communities are unlikely to have the other necessary components in place to consider, elect, and enforce an option. This is true not only in the arena of alcohol control, but in many other aspects of community life. The healthier communities get more help because they are in a position to ask for it. Therefore, they get an inordinate share of the available resources. The problem, then, for supportive agencies is to determine if they can cut back on this help and leave these communities to fend for themselves somewhat more and shift some of the limited resources to reach out to the weaker villages. This is a difficult experiment, more often than not left untried, for fear of demoralizing the healthier communities.

However, the local option law is not only most effective where it is "least needed"; it is also most effective where it is most readily "manipulated." Villages are quick to adopt and alter "instruments" derived from the outside. The appropriateness of the instruments or the way they are used will be determined by village objectives and organization, not by the external agency objec-

tives. The methods may be considerably distorted in the process. If a village asks for one instrument and gets another, it will distort the instrument it receives to meet its problem or purpose.

What appears to be happening in many villages is a modification and adaptation of the new legal tool to suit local purposes. In some instances, the image of the law is used to accomplish village objectives while its carefully designed form and substance are generally ignored; for example, the threat inherent in the law is often used to enforce a wide range of local ordinances on alcohol use, even though there is no connection in law between the statute and the ordinances. Its image is also used to justify a wide range of extra-legal and even illegal enforcement practices over alcohol possession and use within certain villages.

The people's perception of their "having" a law is often more powerful than the reality of the existence of the law. There are numerous examples of communities passing emergency ordinances and the residents continuing to conform the intent of the law long after the 60 day life span of an emergency ordinance has passed. In a few instances even air carriers continued to respect the community intent by refusing to openly transport alcohol after the "death" of the emergency ordinance. There are similar results flowing from invalid local option law elections.

The local option law and other, more traditional means of community control over alcohol importation have a large symbolic component; they are self-indications by the community that alcohol is consensually viewed as a problem and must not be allowed within the community borders. For example, strict alcohol control enforcers will party with those persons who successfully sneak alcohol, through many ingenious means, past the enforcement efforts. They will also admit to their violations, if challenged, and pay their fine or penalty without

much argument; this act may be viewed positively, in that it indicates symbolic support for the intentions and legitimacy of locally-adopted rules.

In some communities, adopting a local option is a more symbolic than legal action, in the eyes of voters. Some voters in these communities have suggested that it is important "to have done it" even if it is not enforced. These communities consider themselves to be "dry" already, based on the existing consensus of residents. The local option law election is considered to be primarily an affirmation of the existing status of the village, not a legal tool to be used against residents. In these instances, thinking of the village as "being dry" is equivalent to "not condoning alcohol use," as distinguished from "having no alcohol" and "having no problems".

Thus, a local option law election may be a gesture made by a community to itself and about itself. In theory, a gesture of consensus about alcohol, in and of itself, is important. In practice, real control must be recaptured through concrete action, such as enforcement. An initial willingness to enforce may also be a gesture only. While it is unlikely that there is actual effective prohibition in those communities that wish for and try to enforce it, there is a feeling of prohibition which 1) generates its own rewards and 2) alters, somewhat, alcohol use and behaviors.

What, then, is the benefit of the local option law? What appears to happen in some villages is that the community vote on the local option law is a more elaborate reaffirmation of existing community standards and rules. The prospect of having troopers enforce the law and having magistrates impose formidable penalties and create criminal records is seen as an immediate deterrent; as an external threat of unknown dimensions, it appears to support and mobilize the internal control mechanisms of the community and thereby produce modified behaviors among residents. The longevity of these positive changes will be dependent, ultimately, on 1) the reality of the threat, 2) the development of greater

internal controls, and 3) significant improvements in quality of life.

The active enactment and enforcement of the law contributes to altered community self-concept; the act of exercising power reifies the sense of power and the improved morale that results from no longer feeling helpless. What is achieved by the local option law may not be control over alcohol but control over community.

Appendix 1

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